

UNITED STATES DISTRICT COURT.  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : 15-CR-637(KAM)

Plaintiff , :

-against- : United States Courthouse

EVAN GREEBEL, : Brooklyn, New York

Defendant. : August 17, 2018, Friday

1:30 p.m.

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TRANSCRIPT OF CRIMINAL CAUSE FOR SENTENCING  
BEFORE THE HONORABLE KIYO A. MATSUMOTO  
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

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1 THE COURTROOM DEPUTY: Criminal cause for  
2 sentencing, 15-CR-637, USA versus Evan Greebel.

3 Will the Government's attorneys please state your  
4 appearances, please.

5 MS. SMITH: Good afternoon, Your Honor.

6 Alixandra Smith, David Pitluck, and David Kessler  
7 for the United States, and then also sitting at counsel table  
8 are Special Agents Matthew Mahaffey and Sean Sweeney.

9 THE COURT: Good afternoon. Thank you.

10 THE COURTROOM DEPUTY: And on behalf of Mr. Greebel.

11 MR. BRODSKY: Good morning, Your Honor. Reed  
12 Brodsky, Gibson, Dunn & Crutcher. With us, of course, is Evan  
13 Greebel, and my partners, Mylan Denerstein and Randy Mastro;  
14 and our colleagues, Josh Dubin and Erin Galliher.

15 THE COURT: Good afternoon, everybody.

16 I will ask Mr. Greebel to raise his right hand and  
17 take an oath to tell the truth.

18 (Defendant sworn.)

19 THE COURT: Thank you. As you can see, Mr. Greebel,  
20 this proceeding has a court reporter who is making a  
21 transcript of today's proceedings and the transcript will be  
22 part of the official court record if you choose to file an  
23 appeal.

24 I'd like to confirm that the Government has notified  
25 any victims regarding this proceeding and has also advised

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1 them of their right to restitution.

2 MS. SMITH: Yes, Your Honor.

3 THE COURT: Thank you.

4 As the parties know, I previously issued an order on  
5 August 14, 2018 respectfully denying Mr. Greebel's Rule 29 and  
6 33 motions for a judgment of acquittal and a new trial. In  
7 preparation for that particular decision, I did review  
8 extensively the trial record. I have also considered the  
9 trial testimony, the exhibits, the materials submitted in  
10 connection with the parties' motions regarding sentencing, the  
11 parties' forfeiture submissions and the parties' previous  
12 arguments on issues relative to sentencing, including the  
13 Fatico hearing, the transcript, the exhibits, and the  
14 submissions of the parties regarding the loss amount.

15 I have also reviewed the Probation Department's  
16 pre-sentence report dated May 7, 2018, its sentencing  
17 recommendation dated May 7, 2018, and two PSR addenda dated  
18 July 7th and July 17, 2018. I have also reviewed Mr.  
19 Greebel's objections to the PSR dated June 8, 2018, his  
20 sentencing memorandum and exhibits, including 182 letters of  
21 support from Mr. Greebel's family members, friends, former  
22 colleagues, and clients dated July 16, 2018, as well  
23 additional letters submitted in support of Mr. Greebel dated  
24 July 20th, July 24th, July 26th, and August 1st, and August 8,  
25 2018. I have also reviewed the letter that Mr. Greebel

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1 submitted to the Court on August 15, 2018.

2 In addition, I reviewed the Government's response to  
3 defendant's objections to the PSR dated June 22, 2018, the  
4 parties' submissions on the appropriate loss calculation for  
5 purposes of the United States Sentencing Guidelines, and the  
6 Government's sentencing submissions.

7 Finally, I have reviewed the submissions and  
8 evidence and the transcripts from the two-day Fatico hearing  
9 on June 1, 2018 and June 18, 2018, as well as the submissions  
10 regarding forfeiture.

11 Have I overlooked any submissions?

12 MS. SMITH: No, Your Honor.

13 MR. BRODSKY: No, Your Honor.

14 THE COURT: I'd like to confirm that Mr. Greebel is  
15 a United States citizen so we may not address ICE  
16 notification, is that correct?

17 MR. BRODSKY: Yes, Your Honor.

18 THE COURT: Mr. Greebel, are you satisfied with your  
19 attorneys, including Reed Brodsky?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Are there any unresolved conflicts,  
22 contentions, motions, or issues that I should address, Mr.  
23 Brodsky?

24 MR. BRODSKY: Your Honor, I believe you will be  
25 addressing the loss and the sentencing guidelines and

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1 forfeiture and restitution.

2 THE COURT: Yes, I will.

3 Mr. Greebel appears to me to be fully aware and  
4 following these proceedings closely.

5 Do you agree with that observation, Mr. Brodsky?

6 MR. BRODSKY: Yes, Your Honor.

7 THE COURT: Do you know of any reason why he should  
8 not be sentenced today?

9 MR. BRODSKY: No, Your Honor.

10 THE COURT: You can remain seated when you address  
11 me. That's fine. If it's more comfortable.

12 Mr. Greebel, have you had the chance to read the  
13 pre-sentence report and all the addenda, as well as the  
14 filings by your attorneys and the Government regarding your  
15 sentencing today?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Did you have any difficulty  
18 understanding those submissions?

19 THE DEFENDANT: No, Your Honor.

20 THE COURT: Did you have a chance to discuss those  
21 submissions with your lawyers?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Are you ready to be sentenced?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: As we know, a Fatico fact-finding

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1 hearing was held June 1st of 18th of this year, at which the  
2 parties had the opportunity to offer evidence relevant to the  
3 loss amounts for purposes of the guidelines calculation.

4 At this time, Mr. Greebel is entitled, if he wishes,  
5 to be heard. If he wishes to make a statement, I am happy to  
6 hear from you, sir. I will assure you that I have read your  
7 letter.

8 MR. BRODSKY: Your Honor, in a prior proceeding with  
9 respect to Mr. Shkreli, would we be able to proceed in the  
10 same way, which is arguments by counsel, and then hear from  
11 Mr. Greebel before imposition of the sentence? I think he  
12 would like to say a few words.

13 THE COURT: That's fine. Whenever is comfortable.  
14 What I would like to say, though, is I have read all of the  
15 submissions, and so, you need not repeat what you have already  
16 submitted to me. However, if you wish to emphasize certain  
17 points in your submissions, I'm happy to hear from you.

18 Would you like to be heard, then, Mr. Brodsky?

19 MR. BRODSKY: Yes, Your Honor.

20 May I speak from here, Your Honor?

21 THE COURT: Of course. Just pull the microphone  
22 close to you.

23 MR. BRODSKY: I would like to say a few words, Your  
24 Honor, and then turn it over to my partner, Mylan Denerstein  
25 who will speak for the sentencing factors in Section 3553(a).

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1           Your Honor, leading up to this day, it is a  
2 difficult day, for Evan, of course, for Evan's family and  
3 loved-ones, Evan's former law firm partners, colleagues, and  
4 friends, many of whom are in court here today, and who have  
5 sent us, who couldn't make it, have sent us their thoughts and  
6 prayers. And for our entire defense team and for me  
7 personally, we want to thank the Court for all of its time and  
8 attention to this matter. We know the Court has many matters.  
9 All cases are important. This case, given the sheer volume of  
10 motions and applications, given two trials, we want to express  
11 thanks, Your Honor, for taking the time and the attention for  
12 over two years to a very important matter to Mr. Greebel.

13           Following Evan's arrest and through this very day,  
14 we believe in Evan passionately and with all of our heart and  
15 sole. While we all sleep prior to and during the trial and in  
16 preparation of trial, since the jury's verdict, we have lost  
17 many more nights of sleep. The conviction didn't change our  
18 belief in Evan, but we struggled through many days and through  
19 many sleepless nights. I personally couldn't sleep many  
20 nights and have spent a lot of time asking questions about the  
21 jury's verdict and those questions will forever plague us and  
22 our team will carry those questions with us forever.

23           One of the things in my thoughts in the middle of  
24 the night that has given me comfort and our entire defense  
25 team comfort as this sentencing day has approached with great

1   trepidation, with great angst and anxiety, particularly for  
2   Evan and Evan's family, is knowing Your Honor and knowing the  
3   fairness and the care that Your Honor has given to each and  
4   every sentencing that we have seen and we have spoken to many  
5   people about. Knowing, although, there were moments of  
6   advocacy on our part which were raw and had touched nerves,  
7   and our team's passionate advocacy, my personal advocacy  
8   knowing that that will not be considered by the Court in  
9   imposing sentence on Evan gives us some comfort.

10           Your Honor, we, with full conviction and every  
11   breath and every ounce of our energy, have believed in Evan  
12   and we have developed a special relationship with him because  
13   for many months, for nearly two years, he has come to our  
14   office and he has spent a lot of time with us. We have gotten  
15   to know him. We have gotten to know his family. We know his  
16   great character, which is reflected in the many sentencing  
17   letters that Your Honor has seen, more sentencing letters than  
18   I have ever seen in any criminal case before.

19           THE COURT: I would agree.

20           MR. BRODSKY: We have gotten to know many of his  
21   family members, and his former law partners, colleagues, and  
22   friends. So, our belief in Evan and his family and our  
23   concern for him is heartfelt, and at this very difficult time,  
24   overwhelming. So I'd like to turn it over to my partner Mylan  
25   Denerstein, who will talk about the sentencing factors.



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1 MS. DENERSTEIN: Thank you, Your Honor. We  
2 appreciate the opportunity to be able to speak to you about  
3 Evan Greebel.

4 I have been lying awake at night contemplating what  
5 we could say that, in addition to the voluminous materials  
6 that have been submitted to the Court, would persuade Your  
7 Honor that a non-custodial sentence is warranted based on the  
8 factors set forth in Section 3553(a). It boils down to one  
9 word: Compassion. Each of us is so much more than the worst  
10 thing we have done. In this case, that is particularly true  
11 when considering the individual Evan Greebel and the  
12 consequences of a custodial sentence. Evan is much more than  
13 this case and can do much more out of prison than in prison.  
14 We respectfully submit that in weighing all of the factors, a  
15 non-custodial sentence is in the interest of justice. Evan's  
16 history and character should be measured based on his life,  
17 which represents a life of doing so many good things and being  
18 such a wonderful person, including being such a wonderful  
19 person in his family.

20 Evan plays a pivotal and vital role in his family.  
21 He is an exemplary son, husband, father, brother,  
22 brother-in-law, cousin, and the list of family members who  
23 Evan has supported goes on and on, as Your Honor is aware.  
24 Evan's family needs him. He is the rock and he has been the  
25 rock for all of them. Removing Evan will be devastating to

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1 his family. Evan's three young children and his wife Jodi  
2 need him. It's not that they simply want him around; they  
3 need him around.

4           Sadly, Evan's family has suffered tremendously.  
5 Nobody can minimize the loss of Jodi's brother, Evan's wife,  
6 at the age of 27, in 2015, four months before Evan's arrest.  
7 Jodi brother's death has naturally had a negative impact on  
8 Jodi and the kids. This is not a fact that anybody would wish  
9 would happen to them or anyone else or can be disputed.

10           Since her brother's death, Jodi has increasingly  
11 relied on Evan as her "sole source of strength." As Jodi has  
12 stated, she was devastated following the loss of her brother  
13 and did not know how she would survive, getting out of bed to  
14 take care of three children seemed too much to bear. Evan was  
15 my lifeline and helped me to get up and put one foot in front  
16 of the other each day. In true Evan form, he offered to  
17 permit my parents to come live with us and he thought that it  
18 would be better for their mental state, to be around all of us  
19 all the time. Not once did he think of himself and the  
20 impacts on him. I was bearing functioning in the weeks and  
21 months after Mark's death and was only able to survive because  
22 I was able to lean on Evan. Lisa Malter, a very close friend  
23 of Evan and Jodi Greebel, explained as a stay-at-home mom,  
24 Jodi kept track of day-to-day activities of her busy family.  
25 But during this tragic time, Evan stepped in to offload so

1 many of Jodi's responsibilities so she could be there for her  
2 grieving parents and sister, as well as tend to their  
3 children. I can safely say that while Jodi has an extensive  
4 network of family and friends, she could not have persevered  
5 through this tragedy without Evan at her side.

6           The last three years of this poor woman's life has  
7 been decimated by the tragedies that have struck her. Not a  
8 day goes by when I don't question how she was given this lot  
9 in life. I cannot imagine the thought of her losing Evan  
10 after the calamity she has faced today. And I think there are  
11 so many other letters that reflect that same sentiment and the  
12 fact that Evan is both a rock, a pillar of strength and  
13 comfort to the family. A family friend wrote that Evan is a  
14 role model of a father, a devoted, loving, hands-on dad who  
15 would do anything for his kids, his family and his friends.

16           Evan's mother, Nancy Citrin, wrote Evan is the kind  
17 of husband that any parent would hope their for daughter,  
18 loving, respectful, conscientious and very supportive.

19           Evan's children have already suffered the loss of an  
20 uncle. Losing a father will be equally devastating. Evan's  
21 family needs him here to care for them. He cannot do that  
22 from prison.

23           I'm not even speaking to the loss to Evan's parents,  
24 siblings, brothers, cousins, friends, which have already been  
25 submitted to the Court for Court's consideration.

1 I submit, Your Honor, removing Evan from his  
2 children and Jodi's lives at this particular time given their  
3 individual circumstances and what they have offered suffered  
4 is just not warranted under 3553(a).

5 Second, Evan has been, over the course of 40 years,  
6 a compassionate, caring friend. This is truly a testament to  
7 who Evan is as a person. Evan's friends would feel his loss  
8 deeply. He is committed to them. He has helped so many of  
9 this in so many different ways. He cares for people and gives  
10 to them naturally as part of his character in ways that are  
11 worthy of consideration and recognition.

12 A law school classmate explained how Evan helped her  
13 when they attended Georgetown. During her first semester of  
14 law school, she was the victim of a crime in her apartment  
15 building in Washington, D.C. "Not wanting to remain in my  
16 apartment after the incident, I tried to find alternative  
17 living arrangements as quickly as possible. I was alone in a  
18 strange city far away from my family and I suddenly found  
19 myself needing a new apartment. Evan, overhearing my  
20 situation from a mutual friend, reached out and notified me  
21 that there was an apartment available in his building.  
22 Without really knowing me at all, he helped facilitate the  
23 rental, boxed up my apartment, and moved my belongings from my  
24 old apartment to the new one. And anybody who has moved,  
25 knows that moving is incredibly difficult. And as if this

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1 wasn't enough, Evan also walked me to my car in my parking  
2 garage for months so I didn't have to walk there alone. All  
3 of those efforts from someone who barely knew me and it was  
4 all done out of the goodness of his heart.

5 Time and time again, Evan has proven himself to be a  
6 wonderful and caring human being.

7 Evan's college friend, Mike Weiskopf wrote that it  
8 was because of Evan that he sought treatment for his lung  
9 cancer at an early stage because Evan sat him down and  
10 insisted that he go to the doctor and seek medical attention.  
11 Michael stressed that Evan was not only "instrumental in  
12 pushing me to seek the medical help that I needed, but he  
13 constantly called to check on me to see how I was doing and  
14 what I might need."

15 As Your Honor is aware from the numerous letters  
16 that were also submitted, Evan has hosted so many people at  
17 his home and opened his home to anybody in need.

18 Karen Grill who, together with her sister, are  
19 welcomed into the Greebel home each holiday season after the  
20 Grills tragically lost both their parents, describing this  
21 dedication to others as simply, "The Greebel way."

22 I know the Court received a lot of letters about  
23 what Evan has meant to these individuals. These letters are  
24 heartfelt, thoughtful, and reflective, and they are written by  
25 many people who know Evan better than any of us. What they

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1 demonstrate is that over Evan has done so much good and aided  
2 his family in so many different ways. Evan is compassionate.

3 Evan also has an extensive history of community  
4 service, which is also detailed in the PSR and throughout  
5 submissions to the Court. Even during the most trying times  
6 in Evan's and his family's lives, which has been missed in the  
7 last three years, he has pushed forward with his commitment to  
8 giving of himself and his time to benefit those in need.

9 We can name any number of examples of Evan's  
10 lifelong commitment to community service. I want to just  
11 highlight a very small sample here to demonstrate Evan's  
12 strong commitment to helping others and helping those who are  
13 less fortunate than himself. Some of the things Evan has done  
14 is collecting and delivering food for the poor and homeless in  
15 Westchester as a young man, establishing a fund for college  
16 students who needed financial assistance to travel home for  
17 family emergencies, helping homeless individuals to develop  
18 job skills with his work with Hero Organization during and  
19 after college, creating a Jewish fellowship group through  
20 Hillel of Greater D.C. so that people could get together and  
21 communicate and feel more comfortable, regularly volunteering  
22 as a coach, which is also a very difficult job, raising nearly  
23 15,000 for the SPCA of Westchester. And as Your Honor is  
24 aware, he is currently involved in dedicating himself to  
25 establishing a 30- to 40-bed drug and alcohol inpatient

1 facility.

2           There is no doubt in any of our minds at this table  
3 and a large part of this courtroom that if Evan remains in his  
4 community, he will continue to support his family and friends.  
5 He will continue to give of himself to others and will be an  
6 asset to the community, not a detriment.

7           I know the Court is required to consider the need to  
8 protect the public and whether training is necessary. This  
9 was not a violent crime. Evan has never been convicted of a  
10 violent crime or any other crime outside of this matter.

11           As Evan's uncle, Charles Citrin, noted this crime  
12 was an aberration, contrary to his normal character. The  
13 public is at no risk because Evan will lose his law license.  
14 His reputation has been destroyed and a felony conviction is  
15 no easy bar for him to overcome. He will be severely limited  
16 in his options. There is no doubt that his felony convictions  
17 alone will adequately deter him from committing any crimes in  
18 the future.

19           Evan does not need training. Evan is a highly  
20 educated who is determined to go forward and rebuild his life.  
21 He is not going to re-offend. He is not going to put his  
22 family, friends, and his community at risk. There is  
23 absolutely no way.

24           We know the Court is very familiar with the nature  
25 and circumstances of the offense since you presided over the

1 trial in this matter, so it has not been my focus.

2 We respectfully submit Evan does not deserve to be  
3 sentenced to prison because he grew up in an intact, loving  
4 family and friends and with certain opportunities. Evan  
5 worked hard in college. Evan worked hard in law school. He  
6 worked hard to become an Eagle Scout, which is no easy feat.  
7 He worked hard for many of his clients and his colleagues, who  
8 have written to the Court in great detail to describe how  
9 Evan's work was impeccable.

10 The conduct for which Evan Greebel has been  
11 convicted and for which Evan Greebel will be forever  
12 remembered simply does not tell the whole story of Evan or  
13 provide a complete picture. Evan has done many good things as  
14 a lawyer and will continue to do many good things if he  
15 remains in the community.

16 The need for deterrence and just punishment has been  
17 served. Evan's conviction has clearly shattered his life. It  
18 has destroyed his career and his plans for the future and it  
19 has done so in an extremely public fashion. You need only  
20 look at the press coverage surrounding Evan's conviction to  
21 understand that he will forever be a marked man and his  
22 reputation will be tarnished forever.

23 There is simply no chance that Evan will ever find  
24 himself again in this situation. This alone is enough to  
25 satisfy the need for specific and general deterrence. The



1 consequences that Evan has already suffered accomplishes the  
2 goals of specific deterrence. As I have stated, Evan will  
3 lose his license and his reputation has been extremely damaged  
4 and will be unable to work in the legal world for the  
5 remainder of his career. That is substantial. This is  
6 meaningful.

7 As Evan's father wrote, Evan will not be able to  
8 practice law and it is unclear how he will support his family.  
9 The study and practice of law was Evan's lifelong passion and  
10 all he wanted to do since he was a young child. Losing his  
11 law license is a punishment he will suffer from every day for  
12 the rest of his life and directly links to the very conduct  
13 for which he has been tried and convicted. Depriving him of  
14 the ability to help clients is an ongoing and extremely  
15 impactful punishment for Evan.

16 A former client noted the charges of conviction have  
17 already punished him severely, adequately by destroying his  
18 reputation forever and through the loss of his law license,  
19 along with that reputation, his primary means of income and  
20 family support. He has also suffered extreme public shame and  
21 upheaval as the press has broadcast his darkest moments from  
22 arrest to trial to today to the world and general deterrence  
23 has been accomplished.

24 The conviction of former Katten Muchin Rosenman, LLP  
25 partner Evan Greebel for conspiring with Pharma Bro Martin

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1 Shkreli to defraud Retrophin and its investors is a harsh  
2 reminder to lawyers of the importance of knowing when to walk  
3 away from a dangerous client. Greebel's fall from a one-time  
4 promising corporate attorney for Katten and later Kaye Scholer  
5 to a convicted criminal serves as a lesson for lawyers that  
6 they need to be ready to let go of even lucrative client  
7 engagements. That is Law360 from January 2, 2018.

8 Quoting the statement of the Acting U.S. Attorney  
9 for EDNY at the time of Evan's conviction, "The verdict has  
10 sent a message to lawyers that they will be held accountable  
11 when they use their legal expertise to facilitate the  
12 commission of a crime."

13 Evan has suffered. His family has suffered. The  
14 collateral consequences of his conviction are just punishment  
15 enough. The experience of arrest, trial and conviction has  
16 been devastating to him and his family. Everybody knows he  
17 will not be able to practice law. We understand he has lost  
18 the only way he has ever provided for his family. He may not  
19 even be able to help his wife run her small business which she  
20 is currently doing to help support them.

21 I would like to close by reading a part of Evan's  
22 mother, Barbara Greebel's letter, which to me sums up best why  
23 a non-custodial sentence in this case is warranted.

24 "December 15th changed all of our lives. Charles  
25 and I were in Florida and then the unthinkable happened, our

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1 son was arrested. That morning we returned to Brooklyn to  
2 stand with our son. As the charges were explained, I choked  
3 up and almost fainted when I signed the document that pledged  
4 our home as collateral.

5 "Evan has always worked admirably with his  
6 colleagues and for the best interest of his clients. He is  
7 not a kidnaper, murderer, embezzler, or drug kingpin.

8 "I love my son dearly and everyone he meets wants to  
9 be his friend. While this may sound unorthodox, it is with  
10 tears in my eyes that I beg you to allow me to carry out his  
11 sentence in place of my wonderful son Evan. I am 72 years old  
12 and I have had a fabulous life. Fortunately the recipient of  
13 unconditional love and support from my whole family.

14 "When Charles and I needed financial help, Evan  
15 provided assistance for years even though he went with less.  
16 Evan's family needs him. His three young children need his  
17 excellence guidance and love. His wife Jodi needs his support  
18 and care.

19 "I'm a good cook, organizer, and very competent  
20 reading, learning disability teacher. I would be an asset to  
21 spread the light. I could run an educational program, teach  
22 computer research or work in a library.

23 "If you truly believe in your mind and heart that he  
24 must be punished, please be extremely lenient. Evan has lost  
25 so much already. He has resigned from his law firm and has

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1 worked sporadically for the past two and a half years never as  
2 an attorney.

3 "Due to his felony conviction, you know he will be  
4 disbarred and a dismal future looms over him. Please use  
5 discretion and consider probation. Our society may be better  
6 served if he is allowed to remain at home doing community  
7 service to aid the poor, write grants for non-profits, help  
8 Governor Cuomo's project in Puerto Rico, assist with public  
9 housing, et cetera.

10 "Evan is not a danger to the public and he needs to  
11 be able to earn a living in order to keep his family healthy,  
12 rather than the federal government wasting a substantial  
13 amount of tax payer money on his room, clothing,  
14 transportation, personal items, medical treatment,  
15 supervision. Please let him stay with his family and serve  
16 those in need and support those he loves. Please show your  
17 compassion and impose a sentence that will not tear his family  
18 apart. You will not be disappointed.

19 "We respectfully submit that this Court should  
20 impose a non-custodial sentence imposed on Evan. That is  
21 sufficient to justly punish Evan and accomplish the goals of  
22 sentencing. If Your Honor is inclined to impose a prison  
23 term, we respectfully request a sentence of home confinement  
24 given his family circumstances, with the combination of  
25 community service.

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1 "Thank you, Your Honor, for allowing me to be heard."

2 THE COURT: Thank you.

3 Does the Government wish to be heard?

4 MS. SMITH: Yes, Your Honor, just briefly.

5 I want to start by also thanking the Court for your  
6 attention to detail and for the incredible amount of work that  
7 Your Honor, Your Honor's clerk and your chambers staff have  
8 put into this case over the past almost three years. I know  
9 that having presided over two trials, multiple hearings,  
10 thousands and thousands pages of briefing that Your Honor is  
11 very familiar with the facts of this case. So what I would  
12 like to do is just take this time to very briefly respond to  
13 some of the arguments the defendant has made regarding the  
14 3553(a) factors and to highlight what the Government believes  
15 are the most important considerations in that analysis and to  
16 explain why the Government has proposed a five-year sentence  
17 of incarceration for this defendant.

18 As an initial matter, the guidelines range is  
19 supposed to be the starting point, the initial benchmark for  
20 any sentence. The Government and Probation have calculated  
21 that range to be 108 to 135 months. The Government's  
22 recommendation of 5 years or 60 months is therefore half of  
23 the recommended guidelines range.

24 As the Court is aware, our office generally  
25 recommends a sentence within the guidelines range. The

1 decision to recommend a below-guideline sentence is not one  
2 that we do often and it is not a decision that we take  
3 lightly. I emphasize this because the defense has argued at  
4 length for a non-incarceratory sentence and has suggested that  
5 any sentence of incarceration ignores key facts or legal  
6 precedent or somehow improperly balances the 3553(a) factors.

7 To the contrary, we have arrived at a  
8 below-guidelines sentence of five years, of half the  
9 recommended guidelines range, because we have carefully  
10 weighed those 3553(a) factors in the context of the facts of  
11 this trial, as well as the existing case law. That is to say  
12 the five-year recommendation already accounts for a lot of the  
13 factors that the defense has discussed, such as the  
14 defendant's lack of a criminal history, his role relative to  
15 his co-conspirators, and particularly, Martin Shkreli, who  
16 received seven years, and his contributions to the community.

17 It is the defendant's proposed sentence, a sentence  
18 of probation which cannot be squared with the facts or the  
19 law. It is an extraordinary deviation from the guidelines and  
20 particularly in a case like this. It can't be squared with  
21 the serious nature of the crimes or the defendant's repeated  
22 decisions to commit those crimes over a period of years.

23 (Continued on following page.)  
24  
25

1 (Continuing)

2 MS. SMITH: It cannot be squared with the  
3 defendant's use of his law license to commit and conceal those  
4 crimes, and the repeated abuse of his position of trust as  
5 Retrophin's attorney and the violations also of his ethical  
6 duties to his client. And it cannot be squared with the need  
7 for the sentence to impose and promote respect for the law to  
8 send a message both to the legal community and to this  
9 defendant, who we believe has failed to take any  
10 responsibility for his actions, that corrupt lawyers who  
11 commit crimes will face significant punishment.

12 Starting with the nature and circumstances of the  
13 offense, there is no dispute that the crimes the defendant  
14 committed were serious, stealing millions of dollars in cash  
15 and stock and manipulating the price and trading volume of the  
16 shares of a public company.

17 What I want to focus on is the nature of the  
18 defendant's participation in those crimes, which is why this  
19 factor, I think, weighs heavily in favor of an incarceratory  
20 sentence.

21 First, it's significant that the crimes did not  
22 constitute a one-time lapse in judgment. There has been a lot  
23 of discussion of aberrant behavior, but this was a series of  
24 decisions made by the defendant over a period of years.

25 With respect to Count Seven, we have settlement

1 agreement after settlement agreement, the control memo, the  
2 settlement agreements that were paid after that, the  
3 distribution of shares pursuant to those agreements, and then  
4 the shift and the drafting of the consulting agreements and  
5 the misleading language in the SEC filings. Each of those  
6 decisions was made over a period of months and years again and  
7 again, and at any point the defendant could have chosen not to  
8 continue with the criminal conspiracy.

9 And with Count Eight there is a similar set of  
10 decisions over a similar amount of time. The initial  
11 distribution of shares, the false Form 13D, the attempt to  
12 control the shares. So, again, a decision after decision,  
13 year after year.

14 Second, it's important to keep in mind that the  
15 defendant was essential to each conspiracy. Neither of those  
16 conspiracies could have succeeded without the defendant. It's  
17 not only because of the specific steps that he took in  
18 furtherance of those frauds, drafting agreements or  
19 distributing shares, but it's also because of the trust that  
20 was placed in him, not just by Retrophin's board, but, for  
21 example, by the defrauded MSMB investors when they were  
22 negotiating those settlements. There was the testimony from  
23 Al Geller and David Geller that Mr. Greebel, himself,  
24 reassured them that the settlements were above board. And it  
25 was his position as a lawyer at a prominent law firm that made



1    them feel comfortable moving forward. And so without that  
2    kind of appearance of legitimacy, the frauds could not have  
3    succeeded.

4               And third, one of the points we've made in  
5    connection with the sentencing guidelines is that the  
6    defendant did not play a minor role in the crimes. As we just  
7    said, he's essential to the crimes. But there's plenty of  
8    evidence that he was not merely Shkreli's pawn, but in a lot  
9    of situations he was actually sort of the problem-solver, the  
10   issue-spotter and he would see an issue and actually  
11   affirmatively take steps to resolve it in a way that would  
12   further the conspiracy. So the control memo is one example.  
13   Drafting a memo to make the auditors comfortable, and then  
14   suggesting splitting up the Marshall agreement into two parts  
15   in order to get around the control memo.

16              There are also examples when the shares are being  
17   redistributed in respect to Count Eight where Mr. Greebel is  
18   problem solving. He's saying, I'm going to figure out a way  
19   to get rid of the Pierotti problem or to save you from a  
20   hostage situation. So there are plenty of examples where  
21   Mr. Greebel, himself, is masterminding certain aspects of the  
22   conspiracy. And so for these reasons, the nature of his  
23   participation in the conspiracy committed over a long period  
24   of time, the fact that his role was essential and the abuse of  
25   trust was essential, and the fact that he, in fact, was

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1 directing certain behavior are all reasons why that factor  
2 weighs in favor of an incarceratory sentence.

3 I also just want to touch briefly on the history and  
4 characteristics of the defendant. Starting with the community  
5 service.

6 As we said in our sentencing memorandum, the Court  
7 should certainly consider the defendant's community service.  
8 And, again, in reaching a below-guidelines sentence we have,  
9 ourselves, weighed that as part of our consideration, but I  
10 think as the caselaw we cited in our brief makes clear, and  
11 it's caselaw that the defendant really did not address in his  
12 reply, the kinds of community services the defendant has  
13 performed, while they are admirable and should be taken into  
14 consideration, are not extraordinary enough to warrant a  
15 departure of this magnitude to a probationary sentence.

16 And we did also note in our memorandum that we were  
17 disturbed by the fact that there were certain things included  
18 in that roster of community service that really should not  
19 have been listed there, including work that was considered  
20 business development for Retrophin and was -- excuse me, while  
21 he was working at Katten and was included in his compensation  
22 memos as a reason to receive higher pay and is now being  
23 characterized as community service.

24 And we also noted that one of the through lines, I  
25 think, of our sentencing memorandum is the abuse of the law

1 license to commit crimes. There was also no use of the law  
2 license for the better of the community. And so despite many  
3 years at a law firm, there was no pro bono work done at the  
4 law firm. I know in the reply brief there was some mention of  
5 letters from friends that on certain occasions the defendant  
6 provided legal advice in the context of a friend wanting to  
7 start a business, but there was no actual concerted pro bono  
8 work actually done at his law firm.

9           The next factor I just want to touch on are family  
10 circumstances. This is always a difficult factor to talk  
11 about because the unfortunate reality is that when a defendant  
12 chooses to commit a crime, the consequences of that decision  
13 are often borne most heavily by others, including the  
14 defendant's innocent family and friends. We do not dispute  
15 that it is incredibly painful for the loved ones of any  
16 defendant to lose that person's presence, their financial  
17 support, their emotional support, because they're sent to  
18 prison. And we do not dispute that it is particularly  
19 difficult for a defendant's children who may not understand  
20 why their parent is being taken away from them. And for that  
21 reason, the impact of a defendant's incarceration on their  
22 family is something that the Government always takes into  
23 account when weighing the 3553(a) factors, and we expect that  
24 the Court should and will take it into account here. And,  
25 again, we have taken it into account in proposing a

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1 below-guidelines sentence. But the question is given that the  
2 family of any defendant before this Court will be negatively  
3 impacted by that defendant going to jail, what weight should  
4 it be afforded?

5 And I think the answer that's given by the caselaw  
6 and the guidelines is to look at whether the harm suffered by  
7 the family of a particular defendant is far outside the  
8 heartland of the kinds of harm inflicted on any defendant who  
9 is taken away from their family. And --

10 THE COURT: I do object to the term harm inflicted  
11 on the defendant suggesting that the Court inflicts harm by  
12 sentencing a defendant to an incarceratory sentence.

13 It has been my view that defendants know or should  
14 know that when they engage in criminal conduct, they run the  
15 risk their conduct will be detected. They will be prosecuted.  
16 And ultimately, if convicted, they will have to be sentenced,  
17 perhaps to an incarceratory term, perhaps not, but it is their  
18 own deeds, their own bad decisions, their own actions that  
19 lead them to be taken from their families. It is not the  
20 Court.

21 MS. SMITH: Your Honor, I apologize for phrasing it  
22 in that way.

23 THE COURT: No, I just have heard that many times  
24 and I do wish more defendants would be cognizant before they  
25 make decisions that lead them before me at sentencing that

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1 they consider the implications and the collateral consequences  
2 of their conduct on their families.

3 MS. SMITH: I appreciate, Your Honor --

4 THE COURT: They suffer the most.

5 MS. SMITH: And I agree with that, and I do think we  
6 were a little more eloquent in our brief to make it clear that  
7 the decision, the harm inflicted on a defendant's family is  
8 the result of the defendant's bad decisions. And I believe we  
9 talked in our memo about the decision to sort of gamble away  
10 sort of a beautiful life, and the consequences then are  
11 visited on people who were not a part of that bad  
12 decision-making.

13 And like I said, it is a hard factor to talk about,  
14 and I think the question really is, is the effects felt by the  
15 family as the result of the defendant's bad decision, that  
16 those fall within the heartland of the kind of effects that  
17 are felt by any family or is there something truly  
18 extraordinary about them. And the caselaw that we focused on,  
19 a lot of it is pre Booker, and that's because, as Your Honor  
20 knows, pre Booker there wasn't the opportunity to use the  
21 3553(a) factors to go above or below guidelines. But that  
22 caselaw is still good because it talks about what does a  
23 heartland case look like and what does an extraordinary case  
24 look like. And I think when you look at those cases it's very  
25 clear that the family circumstances here cannot be categorized

1 as sort of the extraordinary cases that are talked about where  
2 probation is appropriate.

3 By contrast to those cases, a lot of which involve  
4 concerns that a defendant's children will be left homeless or  
5 be sent to foster care or the family would be unable to  
6 provide for themselves, here the defendant's family are  
7 fortunate to have an incredible support network and financial  
8 resources far beyond that of most defendants.

9 I have addressed the sort of report at length in our  
10 sentencing memo. I am happy to answer any questions about it,  
11 but otherwise I think that's what we wanted to say about the  
12 family circumstances.

13 I also just wanted to touch on with respect to the  
14 defendant's character, the defendant's ethical violations in  
15 the course of his representation for Retrophin. And the  
16 reason why we think this is so important and we spent a lot of  
17 time on it in our sentencing memorandum is because we do think  
18 it goes to the defendant's character. The Court has received  
19 many letters from family and friends who know him in other  
20 contexts and have spoken to his reputation for honesty and  
21 ethical behavior, and we know that the Court is going to take  
22 those into consideration, as it should, but the trial record  
23 in this case is replete with clear evidence of deliberate  
24 repeated ethical violations in connection with the crimes.  
25 And the failures of character show that when the defendant

1 thought that no one was watching and believed he would not get  
2 caught, he was willing to repeatedly violate his duty of  
3 loyalty and to sacrifice his integrity. And we included a  
4 whole list of those in our sentencing memorandum, but it  
5 includes lying to the Board of Directors about the true nature  
6 of the settlement and consulting agreements, telling the  
7 external accountants that there was a misprint or a typo in  
8 Mr. Shkreli's Employment Agreement in order to get Mr. Shkreli  
9 additional money, the lies that were told in connection with  
10 the overbilling to Katten. Katten overbilled Retrophin for  
11 work that had actually been done for MSMB entities. When  
12 Mr. Greebel was confronted about that he refused to answer,  
13 even though he knew that the MSMB entities didn't have any  
14 money and that they had been paid by Retrophin.

15 It actually stands in stark contrast to an example  
16 in one of the letters submitted on behalf of Mr. Greebel of a  
17 case where Katten had overbilled a client. I believe the  
18 letter was Mr. Auerbach, and Mr. Greebel took immediate steps  
19 to remedy that situation.

20 Well, in a situation where he was working with  
21 Mr. Shkreli, he allowed \$600,000 to be overbilled and refused  
22 to acknowledge it, refused to deal with the external  
23 accountant and then had it written off as bad debt.

24 There was, you know, at the end of kind of  
25 Mr. Shkreli's tenure at Retrophin, there were the instances

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1 where Mr. Greebel was helping Mr. Shkreli plan to overthrow  
2 his own client's board, the board of Retrophin and then lied  
3 about it in an e-mail to Mr. Aselage.

4 So, you know, these are the kind of ethical  
5 violations that we think, again, when no one is looking, when  
6 you don't think you're going to get caught, do speak to the  
7 defendant's actual nature for honesty and for ethical  
8 behavior.

9 And I do want to address just very briefly sort of  
10 the deceit of his Katten partners because there were some  
11 letters submitted after our sentencing memorandum from various  
12 partners. You know, obviously, Your Honor heard, as we did,  
13 the testimony at trial and it became very clear that there  
14 were many things that Mr. Greebel had withheld from his  
15 colleagues. And there were instances, particularly with  
16 Mr. Rosensaft where Mr. Greebel had outwardly or affirmatively  
17 lied. In particular, with respect to the billing for the  
18 indemnification bill.

19 I recognize that those partners have put in letters  
20 that they have never seen Mr. Greebel commit any ethical  
21 violations. You know, I respectfully submit that as we know,  
22 we have more information than they do. So they didn't  
23 necessarily know the information that Mr. Greebel was  
24 withholding from them and they don't necessarily know what  
25 they didn't know. And so it's very clear from the record, and



1 I believe the jury saw it as well, all of the information that  
2 was not conveyed about the crimes that he was committing to  
3 his law partners.

4 I also want to just touch briefly on this idea of  
5 the loss of the law license should be a basis for probationary  
6 sentence, because Ms. Denerstein talked about that at length  
7 and it was also in the sentencing memo. We believe this runs  
8 counter to the law and to the guidelines and amounts to a  
9 request for special treatment. A defendant fortunate enough  
10 to have a professional license should not be treated more  
11 leniently at sentencing because he used that license to commit  
12 a crime and now might lose it. To the contrary, the  
13 guidelines talk about the abuse of that kind of privilege as  
14 an aggravating factor, that's why there is the guidelines  
15 enhancement for abuse of trust for special skill.

16 And second, the loss of the license is an  
17 appropriate consequence of the actions and it's not a  
18 substitute for punishment. Losing your law license is a  
19 disciplinary mechanism and it's designed to protect the public  
20 from corrupt lawyers, so that when they go to use a lawyer  
21 they can be assured that that person is going to, in fact, act  
22 in their best interest. Given the defendant's egregious  
23 ethical lapses, whether or not he was convicted of a crime in  
24 this courtroom he should have lost his license for the number  
25 of times that he lied to and deceived his own client.

1           And third, there is a lot of discussion in both of  
2 our memorandum of the kind of caselaw around this point. I  
3 think the defendant didn't respond to a lot of the cases that  
4 we cited, especially in this own courthouse, Sampson and Flom  
5 where Judges Irizarry and Mauskopf talked at length about the  
6 special duties owed by a lawyer and how, again, violation of  
7 those duties is actually an aggravating factor.

8           The one case that was addressed was the Schulman  
9 case and, again, I think we've been very straightforward that  
10 we disagree with some of the language in that case, but  
11 critically that case, which is also a district court case so  
12 not precedential, involved a one-time lapse of judgment. It  
13 was a insider trading case where the defendant over dinner one  
14 night made one statement, that was the one tip. There was --  
15 he received a small amount of money, \$30,000, and that was it.  
16 It was literally a crime that occurred in a 30-second time  
17 period and it was the only one. The defendant also was much  
18 older and was in a much different stage of life. And I think  
19 so even setting aside our disagreement with the sort of  
20 broader statement in that case, the case is strongly  
21 distinguishable and the guidelines were half of what they are  
22 here. They were somewhere around 46 to 57.

23           So the bottom line, I think, is that there should be  
24 no separate justice system for attorneys. There should be no  
25 special treatment. They should be treated just as anybody

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1 else and the loss of a law license is not, in and of itself, a  
2 basis for a probationary sentence.

3           And the last two things I just want to touch on are  
4 specific and general deterrence. With respect to specific  
5 deterrence, we feel that the defendant's sentencing submission  
6 and his letter, and obviously we have not yet heard from the  
7 defendant today, still demonstrates a lack of taking  
8 responsibility for any of his actions. It is one thing for a  
9 defendant to maintain his innocence and preserve his appellate  
10 rights, which he has every right to do, but it is quite  
11 another for a defendant when faced with this multi-year record  
12 of ethical violations to fail to acknowledge any mistake, any  
13 lapse of judgment, any poor choices. He knew that he owed his  
14 client a duty of undivided loyalty and he violated that duty  
15 repeatedly. And while he can maintain that those did not rise  
16 to the level of criminal conduct, it is hard for us that he  
17 still has not admitted that those violations have occurred.  
18 And I think that just speaks volumes to where the defendant is  
19 in terms of understanding the mistakes that he's made. And he  
20 has gone even a step further characterizing himself as the  
21 only victim of the frauds that he's committed. His reply  
22 memorandum says that the largest losses were suffered by him,  
23 himself. It's a very self-centered view. Obviously, we have  
24 a victim company. We have witnesses who had to come for not  
25 just one, but two trials, whose lives were, in fact, upended

1 by these frauds, whether or not any of them or some of them  
2 lost money. And I think it's significant, as we've said, that  
3 even after all of this occurred and Mr. Shkreli left Retrophin  
4 that the defendant continued to work with Mr. Shkreli right up  
5 until the time that he was arrested at KaloBios. So even  
6 knowing everything that had happened and knowing what had  
7 occurred and knowing how his client felt about what had  
8 happened, he continued to work with Mr. Shkreli.

9 And then the last point I just want to touch on is  
10 general deterrence, which Ms. Denerstein talked about a little  
11 as well. And I think there's been the suggestion that because  
12 this case has been covered in the press and there's been a lot  
13 of publicity, that that, in and of itself, is sufficient for  
14 general deterrence. You know, lawyers understand that if they  
15 do the wrong thing, then they are going to be punished. And I  
16 think we take issue with that for a couple of reasons.

17 One is that the way that's been characterized by the  
18 defense all the way through and including today is that sort  
19 of that Mr. Shkreli was -- he was a dangerous client, as  
20 Ms. Denerstein said. He was a bad egg. He was a bad person.  
21 And Mr. Greebel had the bad luck to work with him and his life  
22 has been destroyed as a result. And it suggests that there is  
23 no agency on the part of Mr. Greebel. And that is kind of the  
24 specific deterrence that I was talking about, but in terms of  
25 general deterrence, the legal community is watching this case

1 very closely and leniency would send the wrong message, which  
2 is that, you know, if you have the opportunity to follow a  
3 corporate officer and to commit a crime with them, you know,  
4 that you should stand up and do the right thing and live up to  
5 your ethical responsibilities, that you have an obligation to  
6 your client to act with full transparency and honesty and to  
7 not do that is something that is deserving of punishment.  
8 White collar crime is often talked about as a crime that's  
9 deterrable. First of all, general deterrence is necessary  
10 because it's hard to detect, but more importantly it's a  
11 rational crime. It's not a crime of passion, it's not a crime  
12 of necessity, it's a crime that can be deterred. And a  
13 non-incarceratory sentence here would send the wrong message  
14 to the legal community about using your law license in this  
15 way and violating your duties to your client and using it to  
16 commit crimes. And we think that it's not enough that there's  
17 been publicity about the case or that there was a verdict, but  
18 that a sentence of incarceration is something that truly sends  
19 that message to the community.

20           So just in conclusion, the five-year sentence that  
21 we've recommended we think is one that properly balances all  
22 of the 3553(a) factors. It punishes the defendant for his  
23 participation in serious crimes. It serves the goal of  
24 sending a message to other professionals who may be tempted to  
25 place their own interests above others who they have the duty

1 to protect, and shows them that they will face consequences  
2 for using their privileged status to commit crimes. It serves  
3 specifically to deter the defendant who has not taken  
4 responsibility. It avoids unwarranted sentencing disparities,  
5 especially with Mr. Shkreli, who was sentenced to seven years.

6 And I think we had expected to do the minor role  
7 argument first, but with respect to Mr. Shkreli I think we  
8 have weighed that in recommending a lower sentence. And,  
9 obviously, Mr. Shkreli bears a lot of responsibility for what  
10 happened, but when we talked about the nature and  
11 circumstances of the offense and the defendant's prominent  
12 role and necessary role and abuse of trust and steps that he  
13 affirmatively took in furtherance of those crimes, he's not  
14 significantly less culpable than Mr. Shkreli of the two crimes  
15 for which he's been convicted. And we believe that our  
16 sentence takes into consideration the defendant's family  
17 circumstances and community services, but gives those factors  
18 the weight they deserve and not the extraordinary weight that  
19 the defense asked for.

20 THE COURT: Thank you.

21 Did you have anything else to add, Mr. Brodsky, and,  
22 Ms. Denerstein?

23 MR. BRODSKY: No, Your Honor. I think at this time  
24 Mr. Greebel, Evan, would like to say a few words.

25 THE COURT: All right, sir, I am happy to hear from

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1 you, Mr. Greebel.

2 THE DEFENDANT: Thank you for the opportunity to  
3 address the Court. I know that I speak quickly and do not  
4 always properly enunciate my words. It's worse when I'm  
5 nervous. I am going to try my best, but I apologize in  
6 advance.

7 THE COURT: No worries, just take your time.

8 THE DEFENDANT: I want to first publicly address my  
9 wife and my children and my family, as well as my friends and  
10 former colleagues and clients.

11 I said this to many of you privately, but I want to  
12 say it here in front of this Court, thank you. I will never  
13 be able to express to you how much your support and loyalty  
14 has meant to me over the last few years. I also want to thank  
15 all of the Court personnel for all of the consideration and  
16 respect they have shown to my entire family throughout this  
17 trial. And I thank Your Honor, for the care and attention  
18 that Your Honor gave to this case.

19 Never in my life did I think I would be standing in  
20 a federal courtroom in my own criminal sentencing proceeding.  
21 The way I feel to be standing before the Court and my family  
22 and friends as a convicted man defies words. Suffice it to  
23 say, that it is the deepest shame I've ever experienced in my  
24 life. I am so sorry for putting all of you through this  
25 ordeal.

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1 I understand that now Your Honor will sentence me.  
2 I do not want to go to prison. I do not want to leave my wife  
3 and my three young children. I do not want to leave my  
4 elderly parents. I am afraid what will happen to all of them.  
5 And while I know Your Honor is a human being and undoubtedly  
6 has compassion for my family, I also understand that you have  
7 an obligation to fulfill.

8 I will regret every day of my life the day that I  
9 met Martin Shkreli; however, I want to be clear, I only hold  
10 myself responsible for my family's sufferings. As I stand  
11 before you now, years after these events occurred, it is still  
12 so difficult for me to make sense of it all. Starting with  
13 the day I was arrested, I felt like I have been losing pieces  
14 of myself. I lost a piece of myself that day. I lost another  
15 piece of myself the day I left the practice of law. I lost a  
16 piece of myself each day that I heard people say that I  
17 conspired to harm a client. And I lost a piece of myself the  
18 day the jury convicted of me of those crimes. Whatever  
19 sentence Your Honor imposes, I will lose another piece of  
20 myself today.

21 My shame and sense of loss deepens every time I look  
22 at my wife and children in the eye as I think about the pain,  
23 suffering and humiliation that I have brought upon them. I  
24 dread the day when my children decide to search my name on the  
25 Internet. The shame and regret I feel for what my actions



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1 have done to my wife and children is something that will never  
2 go away, no matter what sentence I receive.

3 I am begging for this Court's mercy in asking Your  
4 Honor with the utmost humility and respect to give me the  
5 lowest possible sentence that Your Honor can impose. I cannot  
6 change the past, I can only promise Your Honor, the people,  
7 and the government of the United States, my family, friends  
8 and colleagues, that I am committed to leading a law-abiding  
9 life, continuing to improve my community and doing the very  
10 best I can to protect and care for my family.

11 Thank you, Your Honor.

12 THE COURT: Thank you, Mr. Greebel.

13 Now, I appreciate the statements of counsel and  
14 Mr. Greebel. I do recognize that he has here in court today a  
15 number of friends and family who are here in his support.  
16 They appear to be too numerous to acknowledge, but I do  
17 recognize many of them from the trial as parents, siblings,  
18 in-laws and other close friends.

19 I have read every single one of the letters. They  
20 have, as Mr. Brodsky's suggests, given me a far more holistic  
21 picture of Mr. Greebel beyond what I heard at trial and beyond  
22 the verdict that the jury found when they determined that the  
23 Government had proven him guilty beyond a reasonable doubt as  
24 to both Counts Seven and Eight.

25 So thank you for taking the time, not only to write

1 the Court, but also to be present.

2 The pre-sentence report calculated Mr. Greebel's  
3 advisory guidelines total adjusted offense level at 31.  
4 Because he had no prior criminal convictions, he falls in  
5 Criminal History Category I, and the corresponding advisory  
6 guideline range of imprisonment is between 108 and 135 months.

7 The PSR notes that the statutory maximum sentence  
8 for Count Seven is twenty years and for Count Eight is five  
9 years, for a maximum total of 25 years if I were to impose the  
10 sentence to run consecutively.

11 Mr. Greebel has made numerous objections to the PSR.  
12 And with regard to the PSR sentencing guidelines calculation,  
13 Mr. Greebel objects to application of several sentencing  
14 enhancements as follows:

15 First, and probably most significantly, is the loss  
16 enhancement. Mr. Greebel objects to the PSR's use of a 20-  
17 level enhancement to the offense level for a loss amount and  
18 argues that there is no loss to Retrophin or, alternatively,  
19 that the loss is no more than \$477,329.

20 For the reasons stated below and based upon the  
21 parties' submissions and the Fatco hearing and all the  
22 evidence and testimony submitted during that hearing, I find  
23 that Mr. Greebel has caused Retrophin a loss of \$10,447,979 as  
24 a result of his conduct underlying Count Seven. Mr. Greebel  
25 is also responsible for \$4 million in intentional loss as a

1 result of his conduct underlying Count Eight. Under Guideline  
2 2B1.1(b)(1)(K), the loss falls in the range of 9.5 million to  
3 25 million in losses and results in a 20-level increase in the  
4 base offense level. In reviewing the sentence of  
5 Mr. Greebel's co-conspirator Mr. Shkreli, the Court utilized  
6 the same loss calculation methodology to calculate the  
7 \$4 million loss for Count Eight in the instant case, as was  
8 used in Mr. Shkreli's sentencing.

9 In Mr. Greebel's objections to the PSR and  
10 elsewhere, he argued that Retrophin suffered no loss with  
11 respect to Count Seven, essentially arguing that because the  
12 settlement agreements and consulting agreements benefited  
13 Retrophin in avoiding litigation exposure, there was no loss.  
14 Mr. Greebel argued that the Government has failed to meet its  
15 burden of showing a reasonably foreseeable loss with regards  
16 to the settlement and consulting agreements as Mr. Greebel  
17 "held a reasonable belief that the investors would bring suit  
18 against Retrophin." In doing so, Mr. Greebel intends to  
19 relitigate a basic question that was resolved by the jury  
20 based on substantial evidence that convicted him of Count  
21 Seven, whether he engaged in a conspiracy to commit wire fraud  
22 involving the fraudulent use of Retrophin's funds and assets  
23 through settlement agreements and sham consulting agreements  
24 with investors in the MSMB entities and, thereby,  
25 intentionally caused foreseeable losses to Retrophin.

1 Mr. Greebel also argues that the Government has failed to  
2 prove loss with regard to Count Eight, as the Government  
3 failed to prove Mr. Greebel had the intent to cause loss as  
4 required under the sentencing guidelines. Mr. Greebel's  
5 sentencing memorandum argues that the maximum appropriate loss  
6 amount can be determined by taking the total loss to Retrophin  
7 due to the settlement and sham consulting agreements and  
8 subtracting \$9,970,650, which defendant calculates is the  
9 total exposure to Retrophin from hypothetical lawsuits that  
10 might have been brought by defrauded MSMB investors.  
11 Mr. Greebel challenges the loss calculation of the Probation  
12 Department and the Government for Count Seven arguing that he  
13 invariably believed that a settlement in consulting agreements  
14 would prevent harm to Retrophin if MSMB investors sued  
15 Retrophin. Defendant further argues that the Government did  
16 not prove reasonably foreseeable loss as to each agreement,  
17 that the jury did not identify whether each settlement and  
18 consulting agreement included in Count Seven was fraudulent,  
19 and that the jury could have convicted Mr. Greebel of Count  
20 Seven if only one settlement agreement or consulting agreement  
21 was fraudulent. Thus, he argues the Court cannot simply rely  
22 on the jury's verdict on Count Seven to conclude that all of  
23 the settlement and consulting agreements were fraudulent.

24 Finally, Mr. Greebel argues that because each  
25 settlement was fact-specific and "Mr. Greebel believed that

1 each of the individuals who entered into a settlement  
2 agreement with Retrophin had a colorable legal claim," the  
3 Government cannot include the settlement agreements in the  
4 loss calculation because the loss was not foreseeable to him.

5 As is the case here, a defendant who commits an  
6 offense involving fraud or deceit will be held accountable for  
7 the greater of the actual or the intended loss. That is  
8 Guideline 2b1.1 comment note 3(A). Actual loss is defined as  
9 "the reasonably foreseeable pecuniary harm that resulted from  
10 the offense," and intended loss is defined as the "pecuniary  
11 harm that the defendant purposely sought to inflict" and  
12 includes "intended pecuniary harm that would have been  
13 impossible or unlikely to occur." The Guidelines further  
14 define "pecuniary harm" as "harm that is monetary or that  
15 otherwise is readily measurable in money." "Reasonably  
16 foreseeable pecuniary harm" is defined as that harm that the  
17 "defendant knew or, under the circumstances, reasonably should  
18 have known, was a potential result of the offense."

19 The amount of loss attributable to defendant at  
20 sentencing is the loss attributable to all relevant conduct  
21 for which that defendant is responsible. Under Guidelines  
22 1B1.3(a), relevant conduct at sentencing consists of: (1)(A)  
23 all acts and omissions committed, aided, abetted, counseled,  
24 commanded, induced, procured or willfully caused by the  
25 defendant; and (B) in the case of a jointly undertaken

1 criminal activity (a criminal plan, scheme, endeavor or  
2 enterprise undertaken by the defendant in concert with others,  
3 whether or not charged as a conspiracy), all acts and  
4 omissions of others that were within the scope of the jointly  
5 undertaken criminal activity, in furtherance of that criminal  
6 activity, and reasonably foreseeable in connection with that  
7 criminal activity. It is Guideline 1B1.3(a), comment note 2.

8         Although the scope of an individual's relevant  
9 conduct includes all criminal conduct by the defendant, aided  
10 by the defendant, or that was foreseeable to the defendant,  
11 under the Guidelines, a party convicted of a conspiracy is  
12 only held accountable for the loss that that party, that  
13 defendant, could reasonably foresee. It is United States  
14 versus Perrone, 936 F.2d 1403 et 1416, decided by the Second  
15 Circuit in 1991.

16         To calculate the loss amount, a court must make a  
17 reasonable estimate of the loss amount attributable to the  
18 defendant's offenses. United States versus Abiodun, 536 F.3d  
19 162 et 167, decided in 2008. At sentencing, the court must  
20 determine the loss amount by a preponderance of the evidence.  
21 United States versus Coppola, 671 F.3d 220 et 250 decided by  
22 the Second Circuit in 2012. However, "the sentencing court is  
23 not required to calculate the amount of loss with certainty or  
24 precision." United States versus Norman 776 F.3d 67 at  
25 page 79 decided in 2015. "The sentencing court, in

1 calculating a defendant's offense level, may estimate the loss  
2 resulting from his offenses by extrapolating the average  
3 amount of loss from known data and applying the average to  
4 transactions where the exact amount of loss is unknown.

5 United States versus Bryant 128 F.3d 74 at page 76, decided by  
6 the Second Circuit in 1997. U.S. Sentencing Guidelines  
7 Section 2B1.1. The loss may "be based on the approximate  
8 number of victims and an estimate of the average loss to each  
9 victim." United States versus Sutton, 13 F.3d 595, decided by  
10 the Second Circuit in 1994.

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12 (Continued on the following page.)  
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1 THE COURT: (Continuing) with respect to Count  
2 Seven, at trial, the government presented evidence sufficient  
3 to find by at least a preponderance of the evidence, that it  
4 was reasonably foreseeable to Mr. Greebel that the settlement  
5 agreements and sham consulting agreements used Retrophin funds  
6 and/or assets to pay MSMB investors defrauded by Mr. Shkreli.  
7 The loss to Retrophin due to it paying for a liability that it  
8 did not incur, as Mr. Greebel acknowledged, was reasonably  
9 foreseeable to Mr. Greebel. The majority of the money and  
10 shares used to fulfill the settlement and sham consulting  
11 agreements were fraudulently taken directly from Retrophin.  
12 Numerous Government exhibits support this view, and many of  
13 those exhibits were cited in the government's submissions and  
14 those exhibits were admitted at trial and considered by the  
15 jury.

16 The Second Circuit, in *United States versus Studley*,  
17 47 F.3d 569 at 575, decided in 1995, discussed the guidelines  
18 and case law in the context of "jointly undertaken criminal  
19 activity" and noted that the Court may consider the following  
20 factors: First, any explicit or implicit agreement fairly  
21 inferred by the defendant and others. Here, there was  
22 abundant evidence that defendant and Mr. Shkreli and Mr.  
23 Panoff discussed using Retrophin assets and money to placate  
24 MSMB investors. Factors two and three, articulated by  
25 *Studley*, whether the Defendant assisted in designing and



1 executing the illegal scheme and the role of the defendant in  
2 that scheme. Here, the defendant not only drafted the  
3 agreements, he advised that the consulting agreements could be  
4 used to avoid issues with the auditors, who were raising red  
5 flags when they detected the settlement agreements in or about  
6 late July or early August. Fourth, whether the participants  
7 pooled profits and resources or whether they worked  
8 independently. Here, although none of the participants  
9 actually profited because their goal was to defraud Retrophin  
10 and avoid liability for Mr. Shkreli, they did not work  
11 independently, but rather in close coordination. The Court  
12 finds that the loss amount that resulted from Mr. Greebel's  
13 participation in Count Seven, that was reasonably foreseeable  
14 to him from the settlement agreements and sham consulting  
15 agreements, is approximately \$10,447,997. Many of those  
16 settlement agreements and the consulting agreements used the  
17 same pattern, the same language, the same machinations to move  
18 assets from Retrophin to the settling MSMB investors. The  
19 Court finds that more than a preponderance of the evidence  
20 established that Mr. Greebel, in furtherance of the conspiracy  
21 charged in Count Seven, participated or aided in the execution  
22 of the settlement and consulting agreements and that he was  
23 directly involved in distributing 2.4 million Fearnow shares  
24 to associates of Mr. Shrekli, and using those shares to pay  
25 MSMB investors pursuant to those settlement and consulting

1 agreements and to funnel some of those shares back to Mr.  
2 Shkreli directly. All of this was foreseeable to Mr. Greebel  
3 and was in furtherance of the charged conspiracy. The amount  
4 is calculated by adding the value of money taken directly from  
5 Retrophin's bank accounts and the value of shares transferred  
6 from Retrophin to MSMB investors via their settlement and  
7 consulting agreements.

8 Mr. Greebel supposes an alternate loss calculation  
9 for Count Seven resulting in losses of \$477,329 in losses. By  
10 deducting from the total loss that defendant caused from the  
11 settlement agreements and sham consulting agreements, the  
12 \$1,107,850 in fees that Ms. Klein, defendant's Fatico Hearing  
13 settlement expert calculated for the cost of defending one  
14 litigation, multiplied by the nine potential lawsuits, would  
15 result in a lower loss amount. Essentially, Mr. Greebel seeks  
16 to calculate the loss as though the settlement agreements were  
17 legitimate and not fraudulent. This is not supported by the  
18 evidence in the record.

19 First, Mr. Greebel, acknowledged, in the Control  
20 Memo that he drafted, that Mr. Shkreli and the MSMB entities,  
21 not Retrophin, were responsible for paying the settlement and  
22 consulting agreements arising from the MSMB investors to  
23 satisfaction. There is no evidence in the trial record that  
24 Mr. Greebel ever considered a threat of litigation against  
25 Retrophin. That evidence, and we looked for it carefully,

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1 does not exist in the record. Contrary to defense counsel's  
2 argument, the trial evidence established that Mr. Greebel  
3 never advised the Retrophin board of any litigation threats  
4 against Retrophin, a duty that as outside counsel he was  
5 particularly charged with fulfilling. Moreover, there was  
6 trial evidence that Mr. Greebel never discussed or sought  
7 approval for the MSMB investors' settlement agreements. Mr.  
8 Greebel helped prepare Retrophin's 2013 10-Q filing for the  
9 second quarter of 2013, which described the settlement  
10 agreements as a series of agreements involving a related  
11 party, but did not identify in the forms to the public the  
12 related party as MSMB, nor did the form identify the purpose  
13 for recipients of the settlement agreements. That is  
14 Government Exhibit 247, the transcript at pages 1922 to 1926.  
15 The jury rejected the defense counsel's argument at trial that  
16 the limited and misleading statements about the settlement  
17 agreements in the SEC filings informed the Board of Directors  
18 of the nature of the agreements. The 10-Q also stated that  
19 "Retrophin has no material proceedings pending, nor are we  
20 aware of any pending investigation or threatened litigation by  
21 any third party." That is contrary to the defense theory that  
22 Mr. Greebel considered litigation threat. As outside counsel  
23 for Retrophin, Mr. Greebel did not disclose any known or  
24 threatened litigation by a third party in the Retrophin 10-Q  
25 or to the Board. On May 31, 2013, Mr. Greebel's firm, Katten,

1 issued a letter to Marcum, as auditors of Retrophin, stating  
2 that from January 1, 2012 to May 31, 2013, the firm had not  
3 worked on "any material loss contingencies" relating to  
4 "overtly pending or threatened litigation." Government  
5 Exhibit 124-2. And on July 24, 2013, Mr. Greebel stated to  
6 Mr. Panoff that no material litigation events had occurred  
7 since the last update to the 10-K. Government Exhibit 124-3.

8 Further, there is abundant evidence in the record  
9 that the parties to the settlement agreements and consulting  
10 agreements either did not threaten litigation, or at least did  
11 not do so until Mr. Shkreli failed to fulfill his promises to  
12 redeem the MSMB investor shares or otherwise compensate them  
13 for their investments in the MSMB funds. In fact, as detailed  
14 in the Court's order denying Mr. Greebel's Rule 29 and Rule 33  
15 Motions, multiple settlement recipients testified that they  
16 had never threatened to take action against Retrophin. The  
17 trial transcript at page 2017 to -- I'm sorry, 2716 through  
18 2717 indicates that Richard Kocher testified that although the  
19 agreement released any claim against Retrophin, he did not  
20 have any claims against Retrophin and had not threatened to  
21 sue Retrophin and had not directed his lawyer to sue  
22 Retrophin.

23 At page 1489 of the trial transcript, Sarah Hassan  
24 testified that she never threatened to sue Mr. Shkreli and was  
25 surprised to see a settlement agreement drafted by Mr. Greebel

1 that included Retrophin. Her attorney removed Retrophin from  
2 the agreement drafted by Mr. Greebel, but Mr. Greebel  
3 reinserted the reference to Retrophin. The trial transcript,  
4 at page 3638 through 3646, shows that Darren Blanton testified  
5 that he never threatened to sue Retrophin. The trial  
6 transcript at page 2909 through 2911 indicates that David  
7 Geller testified that he did not threaten to sue Mr. Shkreli,  
8 MSMB or Retrophin, until almost a month after the settlement  
9 agreement drafted by Mr. Greebel was executed, when Mr.  
10 Shkreli failed to meet the settlement obligations.

11 In addition, in the trial evidence was Government  
12 Exhibit 106-27, an e-mail from Mr. Geller to Mr. Shkreli, on  
13 June 12, 2013, stating that he would "pursue all means to  
14 fulfill the settlement agreement," and that "there are plenty  
15 of lawyers who will take this case on a contingency basis."  
16 There is no reference that he intended to include Retrophin.

17 Further, there is no evidence in the record that Mr.  
18 Greebel's belief that there was commingling of assets between  
19 the MSMB funds and Retrophin affected his decision to draft  
20 the settlement agreements. The Court addressed Mr. Greebel's  
21 claims in this regard in its August 14, 2018 Order denying Mr.  
22 Greebel's Rule 29 and Rule 33 Motions. And that's at page  
23 127, note 26 of my Order. Indeed, the Court requested  
24 specific evidence Mr. Greebel considered veil piercing and  
25 alter ego on April 13, 2018.

1           In addition, the transcript at page 8813, in  
2     response to counsel's assertion that commingling was  
3     definitely part of Mr. Greebel's state of mind in 2013, the  
4     Court explained that with regard to this argument, "the key  
5     that you are missing is that there isn't evidence about what  
6     was in Mr. Greebel's head." Evidence that MSMB and Retrophin  
7     assets were commingled is not evidence that Mr. Greebel  
8     believed that Retrophin was vulnerable to suit through an  
9     alter ego or veil-piercing theory.

10           Finally, Mr. Greebel cites to expert testimony by  
11    Gayle Klein at the Fatico Hearing to support his argument that  
12    Retrophin would have been responsible for a portion of the  
13    settlements. Ms. Klein is a litigation partner at McKool  
14    Smith and relied on her twenty years of experience as  
15    litigator to estimate general costs of a "typical" litigation  
16    and her own personal experience drafting settlement  
17    agreements.

18           The Court was not persuaded by Ms. Klein's testimony  
19    as to her evaluation of a litigation release. Even assuming,  
20    contrary to the trial evidence, that any of the MSMB investors  
21    would have sued Retrophin, it is not likely that any of the  
22    lawsuits would have proceeded to trial and incurred \$1.1  
23    million in litigation costs for each lawsuit. As the  
24    government points out in its sentencing memorandum, Ms. Klein  
25    testified on cross-examination that 98 percent of civil cases

1 settle, making it likely that none of the hypothetical cases  
2 against Retrophin would have gone to trial. Moreover, Ms.  
3 Klein's estimate did not factor in any settlement at any stage  
4 of any imagery lawsuit, or any insurance that would likely  
5 cover litigation costs. Nor did Ms. Klein account for any  
6 litigation recovery that Retrophin could achieve by suing Mr.  
7 Shkreli for fraud. The Court accords Ms. Klein's little, if  
8 any, weight. To extrapolate the cost of a full trial in lieu  
9 of fraudulent settlement agreements and to assert that  
10 Retrophin received the benefit of avoiding multiple trials,  
11 when there is evidence that only one MSMB investor admitted at  
12 trial that he considered litigation against Retrophin, strains  
13 credulity. The trial evidence summarized by the Government  
14 and in the PSR at paragraph 39 establishes loss amounts that  
15 were foreseeable to Mr. Greebel by a preponderance of the  
16 evidence in the amount of \$10,447,979. I note particularly  
17 that the Yaffe agreement, listed on page 15 of the PSR, is not  
18 included in the Court's calculations. And I don't believe it  
19 was included in the government's calculations, either, given  
20 the government's acknowledgment that it was not going to  
21 present evidence of the Yaffe agreement.

22           With respect to Count Eight, as supported by the  
23 evidence at trial and during the Fatigo Hearing, defendant was  
24 convicted of conspiracy to commit securities fraud due to his  
25 role in the negotiation and structure of the reverse merger

1 with Desert Gateway in which Retrophin purchased, among other  
2 things, 2.5 million free-trading shares, the allocation of the  
3 free-trading to Mr. Greebel's friends and associates, and  
4 assisting Mr. Shkreli with controlling those shares, and  
5 concealing the control of almost all of the free-trading  
6 shares of Retrophin, also known as the Fearnow shares.

7           The government's proposed estimate of intended loss  
8 on Count Eight is appropriate, reasonable and practicable  
9 under the circumstances and supported by a preponderance of  
10 the evidence, as provided in Guideline 3B-1.1 at application  
11 Note 3(F)(ix). The government reasonably estimates the loss  
12 that was foreseeable to Mr. Greebel as approximately \$4  
13 million, which represents the difference between the valuation  
14 of the average artificial high price of \$5 per Retrophin share  
15 on the open market due to the conspiracy between December 17,  
16 2012 through February 13, 2013, and the \$3 per share price of  
17 the shares paid by PIPE investors. Multiplying the \$2  
18 differential by the 2 million shares controlled by Mr. Greebel  
19 and Mr. Shkreli results in a reasonable and practical loss  
20 estimate of \$4 million. Mr. Greebel and Mr. Shkreli attempted  
21 to control the trading of shares by Mr. Pierotti and the other  
22 hand-selected Fearnow shareholders to prevent depression of  
23 the stock price during the PIPEs in early 2013. In their  
24 scheme to control the price of the free-trading shares, the  
25 defendants, as the government explains, together with others,



1 demonstrates that Mr. Greebel was aware that Mr. Shkreli was  
2 concerned about the falling price of Retrophin shares and the  
3 need to maintain a \$5 share price during the critical PIPE  
4 offerings in January and February 2013. Moreover, defendant's  
5 own expert, Dean Ferrulo confirmed that the stock price is  
6 important to a PIPE investor's assessment of the value and  
7 benefits of a PIPE investment. That was testimony at the June  
8 18 Fatico Hearing at pages 274 to 275. The Court agrees with  
9 the Government and Probation that the 2 million Fearnow shares  
10 are the proper basis for measuring loss because they are the  
11 very shares that the defendant and Mr. Shkreli and others  
12 tried to being make it look like free-trading shares in the  
13 market when, in fact, they were controlled by Mr. Shkreli and  
14 were not traded. As the Fearnow shares were the proxy and the  
15 mechanism for the fraud, they are an appropriate basis to  
16 measure loss.

17 I next turn to restitution. The PSR calculates and  
18 recommends restitution to Retrophin in the amount of  
19 \$10,447,979. That is the amount of loss to Retrophin for  
20 which Mr. Greebel is accountable. Mr. Greebel objects to the  
21 restitution, arguing that the government failed to meet its  
22 burden of establishing that Retrophin was a victim  
23 contemplated under the Mandatory Victims Restitution Act, and  
24 also failed to prove that the loss calculated by the  
25 government was an offense against property. Defendant cites

1 the recent Supreme Court case in *Lagos versus the United*  
2 *States*, 138 Supreme Court 1684, at page 1689 decided in 2018.  
3 Based on *Lagos*, he argues that the term victim "necessarily  
4 excludes corporate entities." Mr. Greebel also argues that a  
5 \$2,452,373 State Court judgment obtained by Retrophin against  
6 the MSMB entities, based on the indemnification agreement that  
7 Mr. Greebel himself crafted with the intention that Retrophin  
8 would simply write off any loss, should be deducted from the  
9 restitution to which Retrophin is entitled. This argument is  
10 respectfully rejected because there is no evidence that the  
11 judgment has been paid or will be paid. Mr. Greebel also  
12 argues that a release entered into between Katten and  
13 Retrophin in 2016, "in which Retrophin released Katten and all  
14 present partners, which would also include Mr. Greebel, from  
15 any and all claims" precludes restitution.

16 Under the Mandatory Victims Restitution Act,  
17 restitution is mandatory for crimes involving an offense  
18 against property under this title, including any offense  
19 committed by fraud or deceit in which an identifiable victim  
20 or victims has suffered a pecuniary loss; 18 United States  
21 Code, Section 3363A(c)(1)(A)(ii), and 3363(A)(c)(1)(B); see  
22 also *United States versus Batista*, as 575 F.3d 226 at page  
23 230, decided by the Second Circuit in 2009.

24 Courts have consistently held that the offenses of  
25 wire fraud and wire fraud conspiracy are offenses against

1 property that are committed by fraud or deceit, such that  
2 restitution is mandatory under the Mandatory Victims  
3 Restitution Act if such criminal conduct results in a  
4 pecuniary loss to an identifiable victim. *United States*  
5 *versus Donaghy*, 570 F.Supp 2d 411, decided by a judge in this  
6 district in 2008, and affirmed in *United States versus*  
7 *Batista*, 575 F.3d 226 in 2009. There, the Second Circuit  
8 noted conspiracy to commit wire fraud, in violation of 18  
9 U.S.C. Section 1349, is an offense against property within the  
10 meaning of the MVRA because it is an offense committed by  
11 fraud or deceit. In *United States versus Kinny*, 610 Federal  
12 Appendix 49 at 51 to 52, decided by the Second Circuit in  
13 2015, the Court noted, under the terms of the MVRA,  
14 restitution for Lancia's single count of wire fraud  
15 encompasses all losses arising from his criminal conduct in  
16 the course of the fraudulent schemes charged in that count,  
17 and in *United States versus Quatrella*, 722 Federal Appendix 64  
18 at page 69, decided by the Second Circuit in 2018, the Court  
19 held that an award of restitution under the MVRA was proper  
20 where the offense against property was wire fraud.

21 Defendant's assertion that the MVRA's definition of  
22 victims necessarily excludes corporations is based on a  
23 misinterpretation of the text of the MVRA and Supreme Court  
24 precedent. Defendant cites the MVRA's reference to victims  
25 under the age of 18 and the omission of corporations in the

1 MVRA's legislative history as proof that corporations are not  
2 contemplated as victims under the MVRA. However, the United  
3 States Criminal Code -- I'm sorry, however, the United States  
4 Code at Title 1, Section 1, provides that "in determining the  
5 meaning of any Act of Congress, unless the context indicates  
6 otherwise, the words person and whoever include corporations,  
7 companies, associations, firms, partnerships, societies and  
8 joint stock companies, as well as individuals." The fact that  
9 the MVRA makes special provision for child victims does not  
10 preclude its application to non-child and non-human victims.  
11 Moreover, the case defendant cites in support of the  
12 inapplicability of the MVRA actually involves an award of  
13 restitution under the MVRA to General Electric, a corporation,  
14 and forecloses the defendant's argument that Retrophin's  
15 corporate status excludes it from restitution as a victim. In  
16 *United States versus Lagos*, the defendant pleaded guilty to  
17 wire fraud in connection with his scheme to defraud a lender.  
18 After restitution was ordered pursuant to the MVRA, the  
19 defendant challenged the portion of the restitution order that  
20 required the defendant to reimburse General Electric for the  
21 costs of its private investigation and legal fees and other  
22 costs in the matter. The challenged Fifth Circuit's opinion  
23 -- the defendant challenged and -- challenged the district  
24 court and brought the matter to the Fifth Circuit. The Fifth  
25 Circuit explained that the district court ordered the

1 defendant to pay General Electric \$15,970,000 in restitution.  
2 On appeal, the defendant challenged the portion of the  
3 restitution order not because it was ordered in favor of  
4 General Electric, but rather because parts of the restitution  
5 related to the costs of General Electric's private  
6 investigation, including legal and consulting fees, which the  
7 Supreme Court acknowledged totaled approximately \$5 million.  
8 The petitioner did not challenge the balance of over \$10  
9 million awarded to GE under the MVRA. The Supreme Court  
10 concluded that the defendant was not obligated to pay the  
11 portion of restitution to GE that related to the costs of GE's  
12 private investigation, including legal and consulting fees,  
13 but left intact the remainder of the award to GE. As such,  
14 the Supreme Court's determination upheld the payment  
15 restitution under the MVRA to General Electric, a corporate  
16 entity, except to the extent it represented expenditures for  
17 private investigation of the fraud upon which the MVRA award  
18 was predicated. In the Second Circuit, corporations are  
19 regularly found to be victims under the MVRA and are entitled  
20 to restitution. In *United States versus Finazzo*, 850 F3d 94  
21 at page 116 to 119, the Second Circuit in 2017 found that the  
22 MVRA allowed for recovery of restitution by a corporation. In  
23 *United States versus Simmons*, 544 Federal Appendix 21 at pages  
24 22 to 23, decided by the Second Circuit in 2013, the Court  
25 found two corporations to be victims eligible for restitution

1 under the MVRA. And the same is true in *United States versus*  
2 *Zangari*, 677 F.3d 86 at page 97, decided by the Second Circuit  
3 in 2012, they are upholding restitution to victim banks.  
4 Defendant's position regarding corporate victims and their  
5 entitlement to restitution has no basis in law, and the Court  
6 respectfully overrules his objection that Retrophin is not a  
7 victim entitled to restitution under the MVRA.

8           Additionally, the alleged Katten Release does not  
9 release Mr. Greebel of his responsibility to pay restitution.  
10 Even though Retrophin has not undertaken any legal action  
11 against Mr. Greebel, it is a proper recipient of mandatory  
12 restitution pursuant to the MVRA. Retrophin, and not the  
13 government, executed the limited release.

14           Further, even if Retrophin renounced the restitution  
15 funds, Section 3663A requires restitution regardless of the  
16 consent of the victims. And as we know, it is the United  
17 States that bears primary responsibility for collecting  
18 restitution, even on behalf of non-governmental victims.

19           A district court may -- indeed must -- impose orders  
20 of restitution on defendants convicted of crimes identified in  
21 the MVRA even if their victims decline to receive restitution.  
22 To hold otherwise would be inconsistent with the MVRA's  
23 statutory scheme of mandatory restitution, and it would  
24 undermine the power of the criminal justice system to punish  
25 defendants, where appropriate, through orders of restitution.

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1 *United States versus Johnson*, 378 F3d 230 at page 245, decided  
2 by the Second Circuit in 2004, and citing *United States versus*  
3 *Brown*, 744 F.2d 905 at page 909, decided in 1994. Restitution  
4 may be paid to the government's Crime Victims Fund, or  
5 elsewhere, if the victim is not willing to accept restitution.

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1 (Continuing)

2 THE COURT: As defendant's argument against  
3 restitution are not supported by the facts in the record, or  
4 by the law, defendant's arguments are respectfully denied.  
5 Retrophin is entitled to restitution in the amount of the loss  
6 it suffered from defendant's conspiracy to commit wire fraud,  
7 specifically \$10,447,979.

8 Defendant objects to the PSR's application of a two-  
9 point "sophisticated means" enhancement under Guideline  
10 2B1.1(b)(10)(C). Under that guideline, the "sophisticated  
11 means" enhancement is applicable if "the offense involved  
12 sophisticated means and the defendant engaged in or caused the  
13 conduct constituting the sophisticated means." Mr. Greebel's  
14 conduct satisfies both factors. That is, the use of  
15 sophisticated means and the defendant's utilization in the  
16 sophisticated means and causing the conduct. The Sentencing  
17 Guidelines define "sophisticated means" as "especially complex  
18 or especially intricate offense conduct pertaining to the  
19 execution or concealment of an offense," Guideline  
20 2B1.1(b)(10) comment note 9(B). I respectfully disagree with  
21 the defendant's argument that his offense conduct was neither  
22 complex nor sophisticated and that all securities fraud and  
23 wire fraud convictions are vulnerable to this enhancement.  
24 With regard to Count Seven, Mr. Greebel used his position, his  
25 special position as a licensed attorney for Retrophin in the



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1 conspiracy to commit wire fraud against his client by  
2 drafting, negotiating and executing a series of settlement  
3 agreements and sham consulting agreements that were used to  
4 obtain Retrophin's shares and money to satisfy the obligations  
5 of Mr. Shkreli and the MSMB entities, and to conceal the  
6 transactions from the Retrophin board, its auditors and the  
7 investing public. Retrophin funds were used to repay the  
8 investors of MSMB Capital and MSMB Healthcare, to conceal the  
9 conduct of Mr. Shkreli charged in Counts One through Six of  
10 the Superseding Indictment. Mr. Greebel concealed the true  
11 nature of the settlement and sham consulting agreements from  
12 the Board, its external auditors, and the public and, indeed,  
13 his own law firm partner, Michael Rosensaft. Mr. Greebel  
14 suggested and then drafted sham consulting agreements to  
15 Mr. Shkreli as a means to continue the transfer of assets from  
16 Retrophin to MSMB investors and avoid scrutiny and concern of  
17 Retrophin's auditors. Together with other conspirators,  
18 Mr. Greebel also utilized the Fearnow shares held by  
19 designated associates of Mr. Shkreli who had paid nominal  
20 amounts for their shares despite Retrophin 's purchase of  
21 those very same shares in the reverse merger of Desert  
22 Gateway.

23 With regard to Count Eight, defendant conspired with  
24 Mr. Shkreli and others to obtain and selectively distribute  
25 and control \$2.4 million free-trading shares in a reverse

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1 merger between Retrophin and Desert Gateway, in part to permit  
2 Mr. Shkreli to acquire control over those free-trading shares  
3 referred to at trial at Fearnow shares. Mr. Greebel and  
4 Mr. Shkreli attempted to control those shares held nominally  
5 by Mr. Shkreli's designees, who had received those shares for  
6 nominal amounts well below any conceivable market price,  
7 through a series of transactions in which the Retrophin shares  
8 were purchased at nominal cost and distributed by the transfer  
9 agent, at Mr. Greebel's direction, to a select group of  
10 individuals at their home addresses or, indeed, to  
11 Mr. Greebel's address. There was a conscious effort not to  
12 send those shares to the Retrophin address. The shares were  
13 then transferred at Mr. Shkreli's and Mr. Greebel's discretion  
14 from Fearnow shareholders to disgruntled MSMB investors and to  
15 Mr. Shkreli, himself. Mr. Shkreli and Mr. Greebel carefully  
16 orchestrated the distribution of the shares to the  
17 shareholders, the Fearnow shareholders, and the subsequent  
18 transfer of shares using sophisticated means to avoid  
19 detection of the connection between the MSMB investors,  
20 Retrophin and the straw purchasers. These complex  
21 transactions by Mr. Greebel and his co-conspirators qualify as  
22 "sophisticated means."

23 Defense counsel objects to an enhancement for  
24 sophisticated means asserting that the enhancement is only  
25 appropriate where there is "an especially complex or

1 especially intricate offense conduct pertaining to the  
2 execution or concealment of an offense." He further asserts  
3 under Application Note 9 of Guideline 2b1.1, the application  
4 of the enhancement is appropriate when defendants use  
5 fictitious or offshore accounts to hide assets or transactions  
6 or purposely divide unlawful conduct among different  
7 jurisdictions. The list in Application Note 9 is not  
8 exhaustive and the Court finds that the complex ongoing and  
9 intricate transactions employed by Mr. Greebel constitute  
10 sophisticated means.

11           The pre-sentence report applies, and Mr. Greebel  
12 also objects to, a two-point enhancement to Sentencing  
13 Guideline Section 3B1.1(a) because the Probation Department  
14 concluded that Mr. Greebel "abused a position of public or  
15 private trust, or used a special skill, in a manner that  
16 significantly facilitated the commission or the concealment of  
17 the offense." Pursuant to Guideline 3B1.3.

18           Mr. Greebel argues that he is entitled to a  
19 two-point reduction because he was irrefutably a minor  
20 participant in the criminal activity in Counts Seven and  
21 Eight. In support of his argument that the abuse of trust  
22 enhancement should not apply, Mr. Greebel asserts that the  
23 evidence has not demonstrated that the defendant possessed  
24 unsupervised professional or managerial control. Citing  
25 United States versus Capoccia, 247 Federal Appendix 311 et

1 311, decided by the Second Circuit in 2007 and quoting  
2 Guideline 3B1.3 comment 1. He asserts that he used the  
3 discretion and control entrusted to him by his victim to  
4 commit the offense. United States versus Broderson, 67 F.3d  
5 452, 456 decided by the Second Circuit in 1995. Defendant  
6 argues that the Government has failed to demonstrate the  
7 above, and has not shown that he used his position as counsel  
8 to significantly facilitate the commission or concealment of  
9 the offense.

10 I find that the "abuse of trust" enhancement applied  
11 in this case is appropriate. The evidence at trial  
12 established abundantly that the defendant occupied a position  
13 of trust with respect to his client, Retrophin, here the true  
14 victim, and owed a fiduciary duty to Retrophin as its outside  
15 counsel. In C.I.R. versus Banks, 543 U.S. 426, 436 decided by  
16 the Supreme Court in 2005, the Supreme Court noted that, "The  
17 relationship between the client and attorney, regardless of  
18 the variations in particular compensation agreements or the  
19 amount of skill and effort the attorney contributes, is a  
20 quintessential principal agent relationship." The restatement  
21 (Second) of Agency at Section 1 comment e, states similar  
22 principles. In addition, Dean Ferrulo, called to testify as  
23 an expert by Mr. Greebel during the June 18, 2018 Fatico  
24 hearing, stated that outside counsel to a company owes the  
25 company a duty of loyalty. The evidence established that

1 Mr. Greebel occupied a position of trust at Retrophin, and  
2 Retrophin's Board members trusted and relied on him to act in  
3 Retrophin's best interests. Two Board members, Steven  
4 Richardson and Stephen Aselage, testified that they relied on  
5 Mr. Greebel for legal advice and trusted that he would  
6 disclose the necessary relevant information to them. Trial  
7 transcript 1921 through 1922, 1965 through 1968, 2072 to 73;  
8 and 2594, that's the Richardson testimony, and 4408 to 09 and  
9 4580, explaining that Mr. Aselage relied on Mr. Greebel's  
10 expertise and his integrity. The Guidelines identify  
11 "lawyers" as individuals with "special skill not possessed by  
12 members of the general public and usually requiring  
13 substantial education, training or licensing." Guideline  
14 3B1.1, comment note 4.

15 Mr. Greebel prepared settlement and consulting  
16 agreements knowing that these agreements would result in  
17 substantial financial losses to his client Retrophin. In so  
18 doing, Mr. Greebel not only abused and violated Retrophin's  
19 trust and his obligations as its outside counsel, but he  
20 utilized his special legal skills and experience. As  
21 reflected in the trial evidence, Mr. Greebel was aware of his  
22 obligations as Retrophin's outside counsel to act in his  
23 client's best interest. He used his position of trust to  
24 conceal facts underlying the settlement agreements and sham  
25 consulting agreements from the Board on multiple occasions.

1 When the auditors discovered and reported the settlement  
2 agreements to the Retrophin board, Mr. Greebel drafted a  
3 control memo acknowledging that Retrophin was not responsible  
4 for compensating the MSMB investors. He also drafted and  
5 caused to be executed by the MSMB entities and Mr. Shkreli,  
6 indemnification agreements and promissory notes in favor of  
7 Retrophin, but Mr. Greebel privately assured Mr. Shkreli that  
8 Retrophin could merely write off the obligations if they were  
9 not honored. At the time, in August 2013, Mr. Greebel had  
10 been aware that the MSMB entities were defunct and lacked the  
11 ability to pay, but new at the same time that Mr. Shkreli was  
12 capable of doing so, yet he protected Mr. Shkreli at the  
13 expense of his client.

14 With respect to Mr. Greebel's request for a minor  
15 role reduction, Mr. Greebel bears the burden of establishing  
16 by a preponderance of the evidence that he was a minor  
17 participant. United States versus Brunshtein, 344 F.3d 91 at  
18 page 102, decided by the Second Circuit in 2003. Mr. Greebel  
19 has not carried his burden, where, as described above, the  
20 evidence established that Mr. Greebel was critical and an  
21 equal participant in the furtherance of the intricate  
22 conspiracies charged in Count Seven and Count Eight.  
23 Accordingly, the Court respectfully denies Mr. Greebel's  
24 request for a minor role reduction.

25 In addition to the above, Mr. Greebel also makes

1 numerous objections to statements regarding his offense  
2 conduct as reported in the PSR. The majority of Mr. Greebel's  
3 objections are argument regarding facts clearly established at  
4 trial or otherwise argued by Mr. Greebel and the Government in  
5 the parties' post-trial submissions and hearings on loss,  
6 forfeiture and in the defendant's Rule 29 and 33 motions. To  
7 the extent that Mr. Greebel's objections or factual assertions  
8 merely reiterate those same arguments or argue for a different  
9 interpretation of the facts already presented to and decided  
10 by the jury at trial, or in the Order denying Mr. Greebel's 29  
11 and Rule 33 motions, or are merely argument, the paragraphs in  
12 the PSR will remain unchanged. For the foregoing reasons, the  
13 Court denies Mr. Greebel's objections to the following  
14 numbered paragraphs: 5, 7, 8 through 21, 23, 24, 26 through  
15 30, 32, 33, 36 through 38, 39, 41, 44 through 47, 51 and 54.  
16 Paragraph 53 regarding restitution and loss is addressed  
17 above. Paragraph 55 addressing defendant's request for a  
18 minor role reduction has also been addressed. Probation has  
19 incorporated Mr. Greebel's factual objections and corrections  
20 in paragraphs 77, 81, 82, 83, 85, 105 and 108 in the first  
21 addendum to the PSR and the Court accepts and incorporates  
22 those changes.

23 Paragraph 6 of the PSR provides a factual  
24 description of the background related to the charged offense  
25 conduct. Mr. Greebel objects on the basis that references to

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1 Mr. Shkreli and Marek Biestek are irrelevant. Mr. Greebel  
2 also asks that the paragraph include additional information  
3 regarding Mr. Greebel's lack of signatory authority. The  
4 Court finds that the facts provided in paragraph 6 are  
5 relevant as they provide the necessary background to  
6 understand the offense conduct in this case, and in so doing,  
7 necessarily and accurately reference Mr. Shkreli and  
8 Mr. Biestek.

9 Mr. Greebel also objects to the description of  
10 Mr. Shkreli's position at Retrophin in paragraph 6. The  
11 Government does not object to noting that Mr. Shkreli served  
12 as the CEO for Retrophin, LLC, a private company, which was  
13 the predecessor to Retrophin, Inc., between February 2011 and  
14 September 2012. Accordingly, the Court incorporates the  
15 details regarding Mr. Shkreli's additional roles and the times  
16 he served in them as amendments to paragraph 6 of the PSR.

17 Paragraph 22 draws Mr. Greebel's disagreement with  
18 the proposed loss calculation, and asserts the mention of Elea  
19 Capital should be stricken. As noted, the Government has  
20 agreed, and the Court has not considered, any references to  
21 the Elea Capital investment and the recovery by Lee Yaffe.  
22 Those numbers are not included in loss calculation. The  
23 particular notation and reference to Mr. Yaffe or Elea Capital  
24 is stricken insofar as it appears in the PSR. The loss  
25 calculation remains unchanged because it never included Elea



1 and Mr. Yaffe's recovery.

2 In paragraph 25 Mr. Greebel asks the PSR incorporate  
3 a statement that Dr. Rosenwald and others threatened, in words  
4 and substance, to file a lawsuit against Retrophin, as well as  
5 the MSMB entities and Mr. Shkreli. The Court acknowledges the  
6 following testimony of Mr. Rosenwald at page 3495 of the trial  
7 transcript:

8 Question: You threatened to bring litigation in  
9 February of 2013, correct?

10 Answer: Correct.

11 Question: You threatened to sue Mr. Shkreli, MSMB,  
12 Retrophin, all of them, correct?

13 Answer: Correct.

14 The Probation Department amended paragraph 25 as  
15 follows:

16 The following sentence is inserted after the second  
17 sentence of paragraph 25 of the PSR:

18 "In addition, defrauded investor Lindsay Rosenwald  
19 threatened, in words and substance, to file a lawsuit against  
20 Retrophin, the MSMB entities and/or Mr. Shkreli." That is the  
21 addendum at page 2.

22 I accept this additional fact to paragraph 2 that  
23 one investor did admit at trial that he threatened Retrophin  
24 with litigation.

25 Mr. Greebel objects to paragraph 35 because he

1 "disagrees with the assumption in the PSR relating to the  
2 defendant's legal obligations to overrule Mr. Shkreli's  
3 decision about whether to raise the consulting agreement with  
4 Mr. Blanton to the Board." The PSR states: "Shkreli and  
5 Greebel, who participated in all relevant Board meetings,  
6 never presented Blanton's sham consulting agreement to the  
7 Board for discussion or approval." I find this statement is  
8 factually supported by the record and I, therefore, deny  
9 Mr. Greebel's request to strike it.

10 With regard to Mr. Greebel's additional objection to  
11 paragraph 35 regarding the evidence before the Board related  
12 to Al Geller's consulting agreement and the shares that  
13 Mr. Geller received from Mr. Shkreli, I accept and adopt the  
14 modified language proposed by the Government as it accurately  
15 reflects the facts in the record and incorporates  
16 Mr. Greebel's assertion about certain Retrophin shares  
17 transferred to Mr. Geller. So paragraph 35 will be modified  
18 with an addition as follows:

19 "And while a draft of Al Geller's sham consulting  
20 agreement was circulated to the Board, members of the  
21 Retrophin board testified at trial that such agreement was  
22 never discussed or approved by the Board; however, in an  
23 e-mail to Alan Geller, the defendant relayed that the Board  
24 had discussed and approved the agreement. Furthermore,  
25 Shkreli and Greebel concealed from the Board that the purpose

1 of the consulting agreement was to resolve Alan Geller's  
2 complaints about his MSMB Healthcare investment. And  
3 continuing: "At the same time that the defendant and Shkreli  
4 forced Retrophin to enter into a sham consulting agreement  
5 with Alan Geller, the defendant and Shkreli also arranged for  
6 Shkreli and Alan Geller to enter into an option agreement  
7 drafted by Mr. Greebel whereby Shkreli would sell 300,000 of  
8 his own Retrophin shares directly to Alan Geller."

9 At paragraph 84, the Probation Department  
10 incorporated additional details regarding two of Mr. Greebel's  
11 children's verified evaluations of medical conditions in the  
12 first addendum to the PSR.

13 Paragraph 87 drew an objection from Mr. Greebel to  
14 the description of his home as "neatly maintained and  
15 furnished" because he contends that his home is "in disrepair"  
16 and has "leaks." As the Government notes, "The description of  
17 the defendant's home in paragraph 87 is based on the home  
18 visit conducted by Probation several months ago" and "the  
19 defendant does not contend that these observations are  
20 inaccurate." The Probation Department has incorporated the  
21 defendant's statements regarding the leak into the first  
22 addendum to the PSR insofar as the PSR is revised to reflect  
23 that defendant provided photos of water damage to the attic,  
24 basement and a bedroom wall at the defendant's home. However,  
25 neither the Court nor the Government can evaluate the

1 defendant's statement that he has insufficient finances to  
2 repair the leaks to his home as his financial disclosures to  
3 the Court through the Probation Department is incomplete and  
4 he continues to challenge the evaluation of his financial  
5 circumstances by the Probation Department. Probation also  
6 declined to incorporate Mr. Greebel's assertion regarding his  
7 financial condition. The Court agrees that the defendant's  
8 assertion regarding his finances cannot be accepted without a  
9 complete sworn financial statement.

10 Paragraph 88 has been amended in the first addendum  
11 to the PSR to reflect that Mr. Shkreli was helping children  
12 with orphan diseases. To the extent that the paragraph  
13 reflects Mrs. Greebel's characterization of Mr. Shkreli as her  
14 husband's client, the defendant's objection is respectfully  
15 overruled. Again, that paragraph merely recounts  
16 Mr. Greebel's description of the relationship between  
17 Mr. Shkreli and Mr. Greebel.

18 Paragraph 89 draws defendant's objection because he  
19 claims it is "not a complete list" of the defendant's  
20 community service. There is no explanation provided by  
21 Mr. Greebel's counsel for why the defendant withheld such  
22 information until sentencing. The Court is now in receipt of  
23 Exhibit A to Mr. Greebel's Sentencing Memorandum, which lists  
24 defendant's extensive and commendable community service, and  
25 has considered that service, among other factors, in

1 determining Mr. Greebel's sentence.

2 Mr. Greebel objects to the accounting at  
3 paragraph 112 of the PSR of his assets and liabilities because  
4 he claims certain assets are owned by his wife, such as the  
5 BMW, and that certain assets are "jointly owned," and that  
6 only half of their shared assets should be attributed to the  
7 defendant. He further argues that certain assets are not  
8 properly valued.

9 The defendant's objections are respectfully denied  
10 because Mr. Greebel had not provided a complete sworn  
11 financial statement, as all defendants who appear before the  
12 Court in this district are required to do, Probation cannot  
13 properly and completely assess Mr. Greebel's financial  
14 conditions. The Probation Department requires disclosure of  
15 jointly-owned assets and assets held by family members from  
16 which the defendant receives a benefit in the assessment of a  
17 defendant's financial condition. As such, the BMW, even if  
18 owned solely by his wife, and the house where defendant lives,  
19 even if owned jointly with his wife, are properly included in  
20 the accounting of his assets, or at least in determining his  
21 financial condition. The Court notes that Mr. Greebel failed  
22 to provide information as requested by Probation about other  
23 assets held by his wife, including bank accounts, retirement  
24 accounts and a trust in her name, which prevented the  
25 Probation Department and this Court from fully assessing

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1 Mr. Greebel's financial condition. The PSR utilized the  
2 market value for Mr. Greebel's properties as determined by  
3 Accurint, as opposed to Mr. Greebel's unsupported statement in  
4 his objection that he looked at comparable properties. As  
5 such, I deny Mr. Greebel's objections to paragraph 112, except  
6 insofar as it corrects typographical errors. Further, I find  
7 that to accurately determine Mr. Greebel's ability to pay a  
8 fine, Mr. Greebel must truthfully and completely disclose any  
9 assets owned by his wife that he enjoys the benefit of.

10 Mr. Greebel will be ordered as a condition of his  
11 supervised release to submit information to Probation,  
12 complete information, for the purpose of determining his  
13 financial condition and whether a payment schedule should be  
14 amended to provide for greater payments for his restitution  
15 and forfeiture.

16 Here there is a significant restitution and  
17 forfeiture judgment that will be imposed and, thus, a complete  
18 and truthful financial disclosure is and will remain a  
19 condition of supervised release.

20 Are there any other objections I have not resolved  
21 regarding the PSR, Mr. Brodsky, or, Ms. Smith?

22 MR. BRODSKY: No, Your Honor. I did want to point  
23 out Mr. Greebel did submit a personal financial statement  
24 form, which he filled out.

25 THE COURT: I know he filled it out, but it was not

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1 complete, that's my point.

2 MR. BRODSKY: I understand.

3 MS. SMITH: No, Your Honor, no other objections.

4 THE COURT: All right.

5 Mr. Greebel has calculated his Total Offense Level  
6 as 17 and his Criminal History Category as I, resulting in a  
7 Guideline range of imprisonment between 24 and 30 months.  
8 Mr. Greebel requests a non-incarceratory sentence based on his  
9 proposed calculations.

10 Both the Government and Probation request a sentence  
11 of 60 months, which is significantly below the Guideline range  
12 calculated in the PSR. Probation recommends a sentence of  
13 60 months for Counts Seven and Eight based on its calculations  
14 in the PSR and recommends that they be served concurrently.

15 I make the following findings of fact and law:

16 On December 27th, 2017 Mr. Greebel was found guilty  
17 by a jury's verdict of the two counts with which he was  
18 charged, specifically, Counts Seven and Eight of an  
19 eight-count superseding indictment. Because the defendant's  
20 trial was severed from Mr. Shkreli's, the Court and the  
21 parties agreed that Counts Seven and Eight would be referred  
22 to at trial as Counts One and Two to avoid speculation or  
23 confusion by the jury.

24 Count Seven of the indictment charged Mr. Greebel,  
25 together with Mr. Shkreli and others, with conspiracy to

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1 commit wire fraud pursuant to 18 U.S. Code Section 1349, a  
2 Class C felony, in connection with the fraudulent settlement  
3 agreements and consulting agreements that defrauded Retrophin  
4 of funds and assets.

5 (Continued on following page.)  
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1 THE COURT: (Continuing) Count Eight of the  
2 indictment charged Mr. Shkreli, together with Mr. Greebel and  
3 others, with Conspiracy to Commit Securities Fraud in relation  
4 to an entity known as Retrophin in violation of 18 U.S. Code  
5 Section 1349, a Class D felony.

6 The PSR calculated a base offense level of 7, and  
7 added a 20-level enhancement for a loss greater than \$9.5  
8 million and less than \$25 million. In addition, the PSR added  
9 the enhancements for sophisticated means and abuse of trust  
10 for two points each, as I discussed earlier, for a Total  
11 Offense Level of 31.

12 I have given respectful consideration of the  
13 Advisory Guidelines and have independently computed Mr.  
14 Greebel's offense level and adjustments as follows:

15 Under Sentencing Guideline Section 3D1.2, I grouped  
16 the two counts of conviction for sentencing purposes, because  
17 "the offense level for each count is determined largely on the  
18 basis of the total amount of loss." Guideline 3D1.2. This  
19 Guideline also specifically instructs the offenses under  
20 Section 2B1.1 are to be grouped.

21 Under Sentencing Guideline 2B1 .1(a)(1), Mr.  
22 Greebel's base offense level for grouped Count Seven and Eight  
23 is seven. For the reasons I have already discussed in  
24 addressing Mr. Greebel's objections to the PSR, the  
25 enhancements I will apply as follows:

1 Under Guideline 3D1.3(b), I apply the intended loss  
2 enhancement corresponding to the aggregated quantity of loss  
3 for Count Seven, which, as I previously explained, is  
4 \$10,447,979. For Count Eight, the loss is \$4 million, leaving  
5 a total of -- a total loss of \$14,447,979. Under Guideline  
6 2B-1.1(b)(1)(K), loss amounts between \$9.5 million and \$25.5  
7 million increase the offense level by 20. Under Guideline  
8 2B1.1(b)(10), the use of sophisticated means warrants an  
9 enhancement of two points.

10 Under Sentencing Guideline Section 3B1.1(a), because  
11 Mr. Greebel abused his position of trust in carrying out his  
12 criminal conduct, the offense level is increased by two  
13 points.

14 The PSR reports that Mr. Greebel has no prior  
15 criminal history, and accordingly, under the Sentencing Table  
16 for the Advisory Guidelines, I find that Mr. Greebel falls  
17 into Criminal History Category I.

18 Have I overlooked anything, other than respectfully  
19 disagreeing with the objections regarding the Guidelines  
20 calculations, Ms. Smith?

21 MS. SMITH: No, Your Honor.

22 THE COURT: Mr. Brodsky?

23 MR. BRODSKY: No, Your Honor.

24 THE COURT: I next consider the sentencing options,  
25 both under the Criminal Code and under the Advisory

1 Guidelines. On Count Seven, the maximum term of imprisonment  
2 is 20 years pursuant to Title 18, United States Code Section  
3 1349. On Count Eight, the maximum term of imprisonment is  
4 five years under Title 18, United States Code Section 371.  
5 Under the Advisory Guidelines, the range of sentence for a  
6 Total Offense Level of 31 and a Criminal History Category of I  
7 is between 108 and 135 months. And as we know, I have  
8 discretion to impose a sentence that is more severe or less  
9 severe than that called for by the Guidelines, so long as I do  
10 not violate the statutory maximums or minimums.

11 Supervised release for Count Seven and Eight allows  
12 the Court to impose a term of not more than three years under  
13 Title 18, U.S. Code Section 3583(b)(2) on each count.  
14 Generally, however, multiple terms of supervised release  
15 should run concurrently as provided in 18 U.S. Code Section  
16 1324(e).

17 Under Title 18, United States Code Section 3559,  
18 Count Seven is a Class C felony and Count Eight is a Class D  
19 felony. Under Guideline Section 5D1.2(a)(2), the ^ guidelines  
20 range ^ guideline range for supervised release for each count  
21 is at least one year, but not more than three years.

22 Under 18 U.S. Code Section 3561(c)(1), because Count  
23 Seven and Eight are C and D Felonies, respectively, the  
24 defendant would be eligible for not less than one nor more  
25 than five years of probation on each count, as provided in

1 3561(c)(1). One of the following must be imposed as a  
2 condition of such probation, unless extraordinary  
3 circumstances exist: a fine, restitution or community  
4 service, as provided in 3563(a)(2). Multiple terms of  
5 probation shall run concurrently, under Section 3534(b).

6 The Advisory Guidelines provide that Mr. Greebel is  
7 not eligible for probation because the applicable Sentencing  
8 Guidelines range is in Zone D of the Sentencing Table. That  
9 is Guideline Section 5B1.1, comment note two.

10 As noted, 18 U.S. Code Section 3363A provides for  
11 mandatory restitution in the total amount of \$10,447,979. The  
12 restitution will be paid to Retrophin, but may be enforced by  
13 the United States and should be payable to the Clerk of this  
14 Court. All payments should be sent to the Clerk of the Court  
15 at the United States District Court of the Eastern District of  
16 New York, 225 Cadman Plaza East in Brooklyn, and reference Mr.  
17 Greebel's name and docket number. Restitution is due and  
18 owing immediately to Retrophin.

19 He is solely responsible for restitution arising out  
20 of Count Seven.

21 On Count Seven and Eight, the maximum fine is  
22 \$250,000 on each count as provided by 18 U.S. Code Section  
23 3571(b).

24 Under Guideline 5E1.2(c)(3) and (4), and 5E1.2(h),  
25 the applicable fine range for Mr. Greebel is between \$30,000

1 to \$300,000. As noted, Mr. Greebel has not submitted a  
2 complete sworn financial statement and thus has not  
3 established his inability to pay a fine. Accordingly, I  
4 would, within my discretion, be able to impose a fine, but  
5 because Mr. Greebel is required to pay both a restitution and  
6 a forfeiture judgment, I will not impose a fine.

7 Pursuant to 18 U.S. Code Section 3013, Mr. Greebel  
8 must pay a mandatory special assessment of \$100 for each count  
9 of conviction, for a total of \$200. Again, that amount is due  
10 and payable immediately.

11 Finally, I will impose a forfeiture money judgment  
12 in the amount of \$116,462.03.

13 Federal Rule of Criminal Procedure 32.2(b)(1)(A)  
14 requires that a trial court, as soon as practical after a  
15 verdict of guilty against a defendant, determine what property  
16 is subject to forfeiture under the applicable statute. *United*  
17 *States versus Peters*, 732 F.3d 93 at 98, decided by the Second  
18 Circuit in 2013. If the government seeks a personal money  
19 judgment, the Court must determine the amount of money that  
20 the defendant will be ordered to pay, and if the Government  
21 seeks forfeiture of specific real or personal property, the  
22 Court must determine whether the government has established  
23 the requisite nexus between the real and personal property  
24 sought to be forfeited and the offense; Federal Rule of  
25 Criminal Procedure 32.2(b)(1)(A). The government bears the

1 burden of establishing that forfeiture is warranted by a  
2 preponderance of the evidence; *United States versus Finazzo*,  
3 682 F, Appendix 6 at 14, decided in 2017, citing *United States*  
4 *versus Daugerdas*, 837 F.3d 212 at 231, decided by the Second  
5 Circuit in 2016; in *United States versus Capoccia*, 503 F.3d  
6 103 at 116, decided in 2007, and citing *United States versus*  
7 *Fruchter*, 411 F.3d 377 at 383, decided by the Second Circuit  
8 in 2005. Under Rule 32.2(b)(1)(B), "The Court's determination  
9 may be based on evidence already in the record and on any  
10 additional evidence or information submitted by the parties  
11 and accepted by the Court as relevant and reliable."

12 As established in the Second Circuit, pursuant to  
13 Title 18, United States Code Section 981(a)(1)(c), a court may  
14 order the forfeiture of any property which constitutes or is  
15 derived from proceeds of criminal securities fraud; *United*  
16 *States versus Contorinis*, 692 F.3d 136 at 145, note 2, decided  
17 2012. 18 U.S. Code Section 981(a)(1)(C) authorizes forfeiture  
18 for any offense constituting specified unlawful activity as  
19 defined in 18 U.S. Code Section 1956(c)(7). In *United States*  
20 *versus Contorinis*, the Court found "Section 1956(c)(7)(A)  
21 incorporates any act or activity constituting an offense  
22 listed in 18 U.S. Code Section 1961(1). 1961(1)(D) lists any  
23 offense involving fraud in the sale of securities. While  
24 Section 981(a)(1)(C) is a civil forfeiture provision, it has  
25 been integrated into criminal proceedings via 28 U.S. Code

1 Section 2461(c), and again citing *United States versus*  
2 *Contorinis*.

3 In cases involving illegal goods, illegal services,  
4 unlawful activities, and telemarketing and healthcare fraud  
5 schemes, the term proceeds is defined to include property of  
6 any kind obtained directly or indirectly as the result of the  
7 commission of an offense giving rise to the forfeiture; 18  
8 U.S. Code Section 981(a)(2)(A). For cases, as here, involving  
9 lawful goods or lawful services that are sold or provided in  
10 an illegal manner, proceeds means the amount of money acquired  
11 through the illegal transactions resulting in the forfeiture,  
12 less the direct costs incurred in providing the goods and  
13 services; 18 U.S. Code Section 981(a)(2)(B). Such direct  
14 costs shall not include any part of the overhead expenses of  
15 the entity or any part of the income taxes paid by at the  
16 entity.

17 The procedures in Title 21 U.S. Code Section 853  
18 regarding the treatment of substitute assets apply to criminal  
19 forfeitures; 28 U.S. Code Section 2461(c), *United States*  
20 *versus Capoccia*, 402 Federal Appendix 639 at 641, citing *U.S.*  
21 *versus Kalish*, 626 F.3d 165, decided in 2010. Under Section  
22 853(p), if, because of acts or omissions of the defendant,  
23 property subject to forfeiture cannot be located, has been  
24 transferred, has been placed beyond the jurisdiction of the  
25 court, has been substantially diminished in value, or has been

1 commingled with other property which cannot be divided without  
2 difficulty, the court shall order the forfeiture of any other  
3 property of the defendant, up to the value of the forfeitable  
4 property; 21 U.S. Code Section 853(p).

5 I find that the evidence at trial supports  
6 forfeiture.

7 On Count Seven, the evidence at trial showed that  
8 Mr. Shkreli, Mr. Greebel and others conspired to commit wire  
9 fraud against Retrophin by causing Retrophin shares to be  
10 transferred to -- shares and funds to be transferred to MSMB  
11 Capital, even though MSMB Capital had not invested in  
12 Retrophin; causing Retrophin to enter into and pay for the  
13 settlement agreements with disgruntled MSMB Capital and MSMB  
14 Healthcare investors; causing Retrophin to enter into sham  
15 consulting agreements with disgruntled investors in MSMB  
16 Capital and MSMB Healthcare as a mechanism to settle  
17 liabilities the investors claim were owed to them by Mr.  
18 Shkreli or his MSMB hedge funds.

19 With regard to Count Eight, the evidence at trial  
20 showed that Mr. Greebel, Mr. Shkreli, and others, conspired to  
21 commit securities fraud through control of the price and  
22 trading of shares of Retrophin. In order to achieve this  
23 control, Mr. Shkreli and Mr. Greebel directed the distribution  
24 of the Fearnow shares to various Retrophin insiders, or  
25 Shkreli associates. As noted in the Rule 29 and 33 Memorandum



1 and Order, there is ample evidence in the record that Mr.  
2 Greebel was aware of and actively participated in the charged  
3 conspiracy. The evidence established that Mr. Greebel helped  
4 Mr. Shkreli engineer a reverse merger with Desert Gateway,  
5 itself not an illegal act, and knew that Mr. Shkreli selected  
6 that particular shell because of the 2.5 million free-trading  
7 shares underlying the Fearnow note. Despite the fact that Mr.  
8 Greebel's actual client, Retrophin, funded the reverse merger  
9 with Desert Gateway, Mr. Greebel arranged for and coordinated  
10 the Fearnow share distributions and purchases by Mr. Shrekli's  
11 selected insiders. Mr. Greebel helped Mr. Shkreli control the  
12 escrowed Fearnow shares nominally owned by the other Fearnow  
13 shareholders and redistributed those shares to MSMB investors  
14 in a manner that did not disclose or obtain consent of  
15 Retrophin's board or the nominal owners of those shares. When  
16 one of those nominal share purchasers, Mr. Tim Pierotti, did  
17 not comply with the plan, Mr. Greebel assisted Mr. Shkreli in  
18 his efforts to stop Mr. Pierotti and to gain control over the  
19 escrowed stock purchased by and held in Mr. Pierotti's name.  
20 However, when Mr. Greebel drafted Retrophin's Form 13D, he  
21 failed to disclose Mr. Shrekli's control of the Fearnow shares  
22 to the investing public despite the fact that those shares  
23 represented the vast majority of the company's 2.5 million  
24 free-trading shares. As a direct result of the frauds in  
25 Counts Seven and Eight, Retrophin was able to stave off

1 financial disaster and pay millions of dollars in fees to Mr.  
2 Greebel's firm in 2013 and 2014. Mr. Greebel, as proven at  
3 trial, was an income partner at Katten who received a salary  
4 calculated in large part based on, one, the total amount of  
5 revenue the partner generated for the firm, and two, his or  
6 her realization rate or the percentage of a client's bills for  
7 which money was actually collected; trial transcript at 1225,  
8 and 6596 through 6957. By the fall of 2012, Mr. Greebel  
9 became the Principal Attorney for all matters related to his  
10 clients, Retrophin, MSMB and his co-conspirator Mr. Shkreli.  
11 Mr. Greebel's distributions from the firm rose and fell during  
12 the relevant period during the charged offense at a rate that  
13 closely correlated with the amount he billed and was able to  
14 collect from Retrophin.

15 The Court considered the methodology for determining  
16 forfeiture in accordance with the Second Circuit's guidance,  
17 which establishes that the Government is not required to  
18 provide a precise calculation of the amount of money a  
19 defendant is required to forfeit.

20 As the Circuit stated, the law does not demand  
21 mathematical exactitude in calculating the proceeds subject to  
22 forfeiture. Indeed, because the purpose of forfeiture is  
23 punitive rather than restitutive, district courts are not  
24 required to conduct an investigative audit to ensure that a  
25 defendant is not deprived of a single farthing more than his

1 criminal acts produced. Rather, district courts may use  
2 general points of reference as a starting point for a  
3 forfeiture calculation and make reasonable extrapolations  
4 supported by a preponderance of the evidence; *United States*  
5 *versus Roberts*, 660 F.3d 149 at 166, decided in 2011.  
6 Quotations are omitted, but citing *Libretti versus United*  
7 *States*, 516 U.S. 29 at 41, decided by the Supreme Court in  
8 1995; and *United States versus Lizza Industries, Incorporated*,  
9 775 F.2d 492 at 498, decided in 1985, and making the  
10 observation in the context of forfeiture of racketeering  
11 proceeds.

12 (Continued on following page.)  
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1 (Continuing)

2 THE COURT: A conservative estimate of forfeiture  
3 based on the record will suffice. United States versus  
4 Basciano, number 03-CR-929, 2000 Westlaw 29439, at 5, Eastern  
5 District of New York, January 4th, 2007.

6 The applicable definition of "proceeds" for  
7 forfeiture in this case is set forth at Title 18 U.S. Code  
8 Section 981(a)(2)(B), which governs forfeiture for lawful  
9 goods or lawful services sold or provided in an illegal manner  
10 as provided at 981(a)(2)(B). For such transactions, "the term  
11 'proceeds' means the amount of money acquired through the  
12 illegal transactions resulting in the forfeiture, less the  
13 direct costs incurred in providing the goods or services."  
14 The Second Circuit has explained that Section 981(a)(2)(B)  
15 "supplies the definition of 'proceeds' in cases involving  
16 fraud in the purchase or sale of securities," whereas  
17 Section 981(a)(2)(A) is reserved for cases involving  
18 "inherently unlawful" activity, such as "the sale of food  
19 stamps or a robbery." United States versus Contorinis, 692  
20 F.3d at 145 note 3.

21 The Second Circuit has held that no particular  
22 tracing analysis is required where the Government seeks an in  
23 personam forfeiture money judgment against a convicted  
24 defendant based on his gains derived from his crimes. United  
25 States versus Awad, 598 F.3d 76, at pages 78 to 79, Second

1 Circuit 2010, citations omitted and stating: "The forfeiture  
2 constitutes a sanction against the individual defendant rather  
3 than a judgment against the property itself. Consequently,  
4 criminal forfeiture need not be traced to identifiable assets  
5 in a defendant's possession."

6 United States versus Diallo, 461 Federal Appendix 27  
7 et 31, decided by the Second Circuit in 2012, and holding that  
8 tracing is not an issue when there is no question the  
9 defendant reaped a benefit from his charged illegal conduct  
10 and an in personam forfeiture money judgment is sought.

11 Further, it is firmly established in the Second  
12 Circuit that even if the proceeds of a forfeiture "pass  
13 through" another party, the defendant's "own portion of those  
14 proceeds could eventually be subject to forfeiture despite its  
15 payment first to an innocent party." United States versus  
16 Torres, 703 F.3d 194, et page 202, decided by the Second  
17 Circuit in 2012. See also United States versus Daugerdas, 837  
18 F.3d 212, et page 231, decided by the Second Circuit in 2016  
19 and finding that the district court did not err when it  
20 required an attorney to forfeit compensation that he had  
21 received from his law firm's account where the attorney had  
22 earned the funds paid by the client to his law firm as a  
23 result of his criminal activity; United States versus  
24 Mahaffey, 693 F.3d 113, et page 138, Second Circuit 2012,  
25 noting that the proper measure of forfeiture for a defendant

1 that committed securities fraud would be the net commissions  
2 the defendant earned off of profits generated as a result of  
3 the fraud. United States versus Shabudin, 701 Federal  
4 Appendix 599, et 601, decided by the Ninth Circuit in 2017,  
5 and affirming the district court's order of forfeiture where  
6 the Court order the defendant to forfeit a year of his salary  
7 as it represented a gain from his fraud offenses stating:  
8 "The district court opined, without explanation, that Shabudin  
9 'would not have received the salary, but for his unlawful  
10 conduct.' We affirm Shabudin's sentence because the district  
11 court did not commit clear error in using Shabudin's salary as  
12 an ultimate measure of loss."

13 The Government requests forfeiture of \$476,249 on  
14 Counts Seven and Eight. This amount is based on the total  
15 amount of Retrophin payments of legal fees to Katten and paid  
16 to Mr. Greebel. According to the government, "the proposed  
17 forfeiture of \$476,249 represents a conservative estimate of  
18 the money that the defendant personally received as a result  
19 of his participation in the criminal frauds, which both  
20 enabled Retrophin to remain in business so that it could  
21 continue to pay hundreds of thousands of dollars of  
22 outstanding Katten bills, and ingratiated the defendant with  
23 Shkreli in order to receive more Retrophin business at  
24 Mr. Shkreli's direction."

25 Mr. Greebel argues that no forfeiture is appropriate

1 on either count because, first, Retrophin paid its legal bills  
2 entirely to Katten; (2), an independent Compensation Committee  
3 at Katten determined Mr. Greebel's salary; and (3), the  
4 Compensation Committee considered a variety of factors in  
5 determining Mr. Greebel's compensation. In support of his  
6 argument that no forfeiture is warranted, he provides only  
7 bare citations to various government exhibits with minimal  
8 analysis. In the alternative, Mr. Greebel argues that any  
9 forfeiture amount for Counts Seven and Eight should be  
10 significantly reduced to encompass only those amounts directly  
11 attributable via billable hours to the conduct charged in  
12 Counts Seven and Eight and for which he was convicted. He  
13 argues, and the Court agrees, that a forfeiture accounting  
14 that directly attributes all amounts billed to Retrophin as  
15 the fruits of illegal activity is overly broad.

16 The Government acknowledges that there are alternate  
17 methods for calculating forfeiture. By using the defendant's  
18 own accounting of billable hours and defendant's proposed  
19 methodology in conjunction with a thorough evaluation of  
20 billing entries to determine the billings that are related to  
21 the conduct charged in Counts Seven and Eight, the Government  
22 ameliorates the concern that all amounts billed to Retrophin  
23 during the relevant period of 2012 through 2014 are  
24 categorized as fruits of illegal activity.

25 I agree with the parties' suggestion that a proper

1 measure of forfeiture can be calculated by determining the  
2 percentage of hours billed to work-related to the conduct  
3 charged in Counts Seven and Eight and applying that percentage  
4 to the amount of Mr. Greebel's salary reasonably derived from  
5 the work billed to Retrophin.

6 Katten billed a total of 7101.9 hours to Retrophin  
7 between November 2012 and March 2014. The Government  
8 identified a total of 157.4 hours clearly billed by the  
9 defendant and other Katten attorneys to activities related to  
10 the conduct underlying Count Seven. That is the alternate  
11 calculation letter at ECF 585-2. The 157.4 hours make up  
12 approximately 2.3 percent of the hours that Mr. Greebel's firm  
13 billed to Retrophin between November 2012 and March 2014. The  
14 Government identified 1583.6 hours billed to activities  
15 related to the conduct underlying Count Eight, which  
16 constituted approximately 22.3 percent of all hours billed to  
17 Retrophin during the relevant time period. Many of the hours  
18 were billed to the Pierotti litigation. And despite  
19 defendant's assertion to the contrary, the evidence at trial  
20 proved, by a preponderance of the evidence, that Mr. Greebel  
21 and Mr. Shkreli supported and encouraged the Katten firm to  
22 commence the Pierotti litigation as a measure to prevent  
23 Mr. Pierotti from disrupting the conspiracy and to continue  
24 control of the price and trading volume of the Retrophin  
25 shares. That analysis was discussed in my Memorandum and



1 Order on Rule 29 and 33 motion at pages 53 to 54 and pages 88  
2 to 96.

3 In an April 2018 letter, Mr. Greebel points out,  
4 belatedly, that certain amounts billed to Retrophin for the  
5 Pierotti litigation were not always, in fact, related to the  
6 Pierotti litigation. That's ECF 592 filed April 21st, 2018 in  
7 response to the alternate calculation.

8 Defendant relies solely on the argument of his  
9 counsel to support this claim and provides no evidence in  
10 support. However, in the interest of fairness, we will deduct  
11 the entries that Mr. Greebel identified in the April 21, 2018  
12 letter from the total hours attributable to Count Eight.  
13 Those entries include a total of 4.3 hours of hours attributed  
14 to Count Eight. Subtracting those hours from the total hours  
15 billed for activities related to Count Eight, we are left with  
16 1579.3 hours related to the conduct charged in Count Eight,  
17 and a total of 1736.7 hours billed to the conduct charged in  
18 Count Seven and Eight.

19 Based on the above calculation, a total of  
20 24.454 percent of the hours that Mr. Greebel's firm billed to  
21 Retrophin in the relevant period was related to the conduct  
22 underlying the counts of conviction and represents gains  
23 derived from Mr. Greebel's role in the charged conspiracy.  
24 Approximately \$476,249 of Mr. Greebel's salary in fiscal year  
25 2015 was derived from his work, and his firm's derivative

1 work, for Retrophin. Defendant acknowledged this figure in  
2 his proposed forfeiture calculation. Defendant also submitted  
3 a billing entries chart utilizing the amount of \$476,249 as  
4 the starting salary or the starting amount from which the  
5 percentage of forfeiture is derived.

6 In fiscal year 2013 Mr. Greebel's salary was  
7 \$355,000 as established at trial in Government's  
8 Exhibit 121-6. In fiscal year 2014 Mr. Greebel's salary  
9 nearly tripled to \$900,000 as established in Government  
10 Exhibit 121-8. This increase corresponded with a revenue  
11 increase for Mr. Greebel of more than 300 percent and a  
12 realization rate of 95.8 percent, with Retrophin accounting  
13 for more than \$2 million of the \$3.5 million in fees collected  
14 from Mr. Greebel's clients. This is in Government  
15 Exhibit 121-7 and 122-4.

16 Mr. Greebel had a realization rate of 101.65 percent  
17 for Retrophin. As then chairman of the Compensation Committee  
18 testified, the exponential increase in Mr. Greebel's salary  
19 from fiscal year 2013 to fiscal year 2014 was driven by  
20 dramatic increase in revenue and realization rates. That's  
21 the trial transcript at 6614 and 1225 to 26, also the  
22 testimony of Ms. Davida describing the importance of the  
23 realization rate as a "major factor" in the determination of  
24 compensation.

25 Mr. Silverman also testified that although Greebel's

1 work with other clients, particularly in the virtual currency  
2 space, also played a role in his salary increase, the increase  
3 was due primarily to Retrophin, encompassing both the  
4 increased business from Retrophin and the higher realization  
5 rate for its bills. Trial transcript at page 6615.

6           However, Retrophin's realization rate dropped  
7 significantly when Retrophin terminated Katten as its counsel  
8 in fiscal year 2015, and Mr. Greebel's salary was reduced  
9 commensurate with his lower realization rate in billing to  
10 \$423,751 as established in Government Exhibit 121-10.

11           I know that although Bitcoin matters, which  
12 Mr. Greebel asserts drove his salary increase in fiscal year  
13 2014, accounted for approximately 25 percent of Mr. Greebel's  
14 fees in fiscal year 2014, and in fiscal year 2015 Bitcoin  
15 accounted for a similarly high percentage of Mr. Greebel's  
16 billable hours, Mr. Greebel's income was still reduced from  
17 fiscal year 2014 to fiscal year 2015. And that is evident in  
18 Government Exhibits 122-4 and 122-5. This evidence, presented  
19 on the record at trial, establishes a causal nexus between  
20 Mr. Greebel's fraud and the compensation he earned as a  
21 partner at Katten during the years at issue.

22           The Government calculated the difference between  
23 Mr. Greebel's salary at Katten for fiscal year 2014 and fiscal  
24 year 2015 as approximately \$476,249, which the Court finds, by  
25 a preponderance of the evidence, is a reasonable approximation

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1 of a salary that Mr. Greebel received as a result of his work  
2 for Retrophin. As such, the defendant is ordered to forfeit a  
3 total of \$116,462.03, which represents a forfeiture of  
4 \$10,555.15 for Count Seven and a forfeiture amount of  
5 \$105,906.88 for Count Eight. The Court finds this figure is a  
6 conservative, practicable and reasonable approximation of  
7 Mr. Greebel's ill-gotten gains.

8 I would like to advise Mr. Greebel at this time that  
9 he does have the right to appeal his sentence and any appeal  
10 must be filed within 14 days of judgment being entered. If  
11 you cannot afford to pay the cost of an appeal, you may apply  
12 for leave to file an appeal if you can establish that you are  
13 indigent. Given what is disclosed in the pre-sentence report,  
14 I do not believe you could establish indigency, but,  
15 nonetheless, you are free to apply. If you do request the  
16 clerk of the Court to do so, he will file and prepare a notice  
17 of appeal on your behalf. And I would ask defense counsel to  
18 take all necessary steps to protect Mr. Greebel's right to  
19 appeal and to have counsel on appeal.

20 Would you do that, Mr. Brodsky?

21 MR. BRODSKY: Yes, Your Honor.

22 THE COURT: Thank you.

23 Is there any property that the Government seized  
24 from Mr. Greebel at the time of his arrest that should be  
25 returned in order to avoid unnecessary subsequent civil

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1 proceedings?

2 MS. SMITH: No, Your Honor.

3 THE COURT: Will you confirm that, Mr. Brodsky?

4 MR. BRODSKY: Yes, Your Honor.

5 THE COURT: Is there anything else that I should  
6 address before we move forward?

7 MR. BRODSKY: No, Your Honor.

8 THE COURT: In addition to giving respectful  
9 consideration to the Guidelines which are not mandatory, I  
10 have the authority, and I recognize I have the authority, to  
11 depart from the Guidelines. As noted before, Mr. Greebel's  
12 advisory Guideline range of custody is between 108 and  
13 135 months given an adjusted offense level of 31 and a  
14 Criminal History Category of I.

15 In addition to those guidelines, and as provided in  
16 Title 18 U.S. Code Section 3661, there is no limitation on the  
17 information concerning the background, character and conduct  
18 that I may receive and consider for the purpose of imposing an  
19 appropriate sentence.

20 In determining Mr. Greebel's sentence, in addition  
21 to the advisory Guidelines, I have also considered all of the  
22 submissions by the parties, the trial record and the facts  
23 contained in the PSR, its addenda, and the materials regarding  
24 loss amounts and forfeiture. I have also given respectful  
25 consideration to those Guidelines, and I now consider the

1 factors set forth at 18 U.S. Code Section 3553(a).

2 I have also reviewed and, again, appreciate the  
3 numerous sentencing letters sent to the Court by Mr. Greebel's  
4 family, friends and former colleagues and supporters. This  
5 is, indeed, a very difficult sentence, difficult for  
6 Mr. Greebel and his loved ones, and difficult for the  
7 Government, and it has been a challenge for the Court to try  
8 to be as complete and thorough as possible given all of the  
9 voluminous submissions and the seemingly endless cascade of  
10 submissions by the parties, but we are here today to sentence  
11 Mr. Greebel.

12 I have considered the nature and circumstances of  
13 Mr. Greebel's offenses, and I find them to be extremely  
14 serious. Mr. Greebel using his law degree was convicted of  
15 one count of conspiracy to submit wire fraud and one count of  
16 conspiracy to commit securities fraud, and he caused  
17 substantial losses to his victim, Retrophin.

18 Starting in 2009, Mr. Shkreli, and this is just  
19 background, he defrauded investors in his MSMB Capital hedge  
20 fund through multiple misrepresentations of material fact  
21 about the size, nature, investment approach and strategy,  
22 personal investing experience and success, educational  
23 background, and the extent of third-party oversight, such as  
24 auditors, of the fund's operations.

25 (Continued on the following page.)

1           THE COURT: (Continuing) Mr. Shkreli induced  
2 investments and convinced investors to keep their money in the  
3 MSMB Capital fund by circulating periodic performance reports  
4 to investors that materially misstated the value of their  
5 investments and the fund's performance. After Mr. Shkreli  
6 lost all of the MSMB Capital fund's money on a failed  
7 investment in February of 2011, he hid that loss from  
8 investors and began a new fund, MSMB Healthcare. Just as with  
9 MSMB Capital, he solicited investments based on multiple lies  
10 about the size and nature of the funds and his experience. He  
11 also misled MSMB Healthcare investors about the performance of  
12 their investments.

13           In February of 2011, Mr. Shkreli began working to  
14 create Retrophin, a pharmaceutical company. Unbeknownst to  
15 the MSMB Healthcare investors, Mr. Shkreli used significant  
16 amounts of their money that they had invested in MSMB  
17 Healthcare to fund Retrophin. Mr. Shkreli redirected over a  
18 million dollars from MSMB Healthcare into Retrophin, and then  
19 used those funds to pay off unrelated professional and  
20 personal obligations of Mr. Shkreli.

21           In September of 2012, Mr. Shkreli told his MSMB  
22 investors that he was winding down both the Capital and  
23 Healthcare hedge funds to focus on Retrophin. He falsely  
24 represented to those investors that they could redeem their  
25 investments in cash within 30 days. In his wind-down letter

1 to Ms. Hassan, Government Exhibit 103-13, which was similar to  
2 the other wind-down letters that he sent to the MSMB  
3 investors, he promised that investors could be cashed out by  
4 October 31, 2012. When the investors in the MSMB funds became  
5 suspicious about Mr. Shkreli's failure to redeem their funds  
6 for cash, Mr. Shkreli strung them along by ultimately ignoring  
7 them, referring them to Mr. Greebel, pretending to work on  
8 paying them back, or delaying their redemptions for months, if  
9 not years.

10 In the fall and early winter of 2012, Mr. Shkreli  
11 worked closely with Mr. Greebel and others to take Retrophin  
12 public through what is known as the reverse merger with the  
13 shell company Desert Gateway. Again, there is nothing illegal  
14 about the reverse merger itself, and Mr. Shkreli clearly  
15 explained his choice of Desert Gateway to his co-conspirator  
16 Mr. Greebel. Although Mr. Greebel noted to Mr. Shkreli that  
17 Desert Gateway was a more expensive option than other  
18 available reverse merger options, Mr. Shkreli and Mr. Greebel  
19 understood that the \$2.5 million in free-trading shares of  
20 Desert Gateway inspired Mr. Shkreli's choice. Together, they  
21 conspired to ensure that 2.4 million of the 2.5 million  
22 free-trading shares would be purchased for nominal amounts by  
23 a select group of Mr. Shkreli's employees and friends. He  
24 selected seven associates to receive those shares; Marek  
25 Biestek, Tim Pierotti, Andrew Vaino, Thomas Fernandez, Kevin



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1 Mulleady, Ron Tilles and Edmund Sullivan, with the  
2 understanding that Mr. Shkreli would control those shares.  
3 Mr. Greebel and Mr. Shkreli then arranged for those associates  
4 to purchase the 2.4 million free-trading shares for nominal  
5 amounts from Troy Fearnow, the sole stockholder of Desert  
6 Gateway. Again, Retrophin had entered into the reverse merger  
7 and funded the reverse merger with its funds, reasonably  
8 expecting as part of the bargain that it would receive all  
9 shares. Mr. Greebel documented the sales between Mr. Fearnow  
10 and the select group. Retrophin lacked sufficient funds to  
11 pay the full \$200,000 for the Desert Gateway merger, so Mr.  
12 Greebel and Mr. Shkreli arranged for Mr. Fearnow to hold back  
13 in escrow 400,000 free-trading shares that had already been  
14 purchased as part of the reverse merger, but then later sold  
15 to the individual purchasers with the expectation that  
16 Retrophin would the pay the balance. Mr. Greebel and Mr.  
17 Shkreli agreed to use the Fearnow shares in order to benefit  
18 Mr. Shkreli, even though the shares were nominally owned by  
19 others. First, Mr. Shkreli and Mr. Greebel tried to control  
20 the sales of the Fearnow shares in order to prevent the  
21 Retrophin share price from falling during two critical PIPEs  
22 in January and February 2013.

23           Again, when one Fearnow shareholder, Mr. Pierotti,  
24 began to sell his shares against Mr. Shkreli's instructions,  
25 Mr. Greebel and Mr. Shkreli discussed the trading and

1 determined it was Mr. Pierotti. Mr. Greebel and Mr. Shkreli  
2 were able to deduce that Mr. Pierotti was the seller because  
3 of Mr. Shkreli's control over the free-trading shares. On  
4 December 28, 2012, Mr. Shkreli wrote an e-mail to Mr. Greebel  
5 stating the stock is trading like crazy, someone is selling  
6 the shit out of it. Mr. Greebel responded: I don't know,  
7 there is no freely trading stock other than you guys and the  
8 500,000 that Mr. Fearnow has. It is Government Exhibit 510,  
9 Mr. Shkreli tried to stop Mr. Pierotti from selling his  
10 shares, and made serious and really shocking threats directed  
11 at Mr. Pierotti's family. After discussing with Mr. Greebel  
12 his plan, Mr. Shkreli's plan, to send an e-mail to the Fearnow  
13 shareholders in an attempt to bring them over the wall and  
14 prevent them from trading their Fearnow shares, Mr. Shkreli  
15 sent an e-mail, nonetheless, to those shareholders to bring  
16 them over the wall. In fact, the tag line, the subject line  
17 was "over the wall."

18 Mr. Shkreli also wrote a threatening letter -- not  
19 to Mr. Pierotti, but to his wife, harshly disparaging Mr.  
20 Pierotti and threatening to make the Pierotti family,  
21 including their four young children, homeless. Mr. Shkreli  
22 later boasted in an interview about what he had done, stating:  
23 "I threatened that dude and his fucking kids" and repeated, "I  
24 threatened that fucking guy and his fucking kids because he  
25 fucking took \$3 million from me and he ended up paying it

1 back. I had two guys parked outside of his house for six  
2 months watching his every fucking move. I can get down."

3 Mr. Greebel did not send that letter, but he became  
4 aware of that letter and did not try to neutralize the effect  
5 of that threat. Mr. Greebel and Mr. Shkreli worked together  
6 and took escalating steps to regain control of Mr. Pierotti's  
7 shares. Mr. Greebel became aware of Mr. Shkreli's threats  
8 against and harassment of Mr. Pierotti and his family, and  
9 although Mr. Shkreli was a Retrophin employee and a CEO of  
10 Retrophin, Mr. Greebel concealed this information from the  
11 Retrophin Board. This is obviously behavior that put  
12 Retrophin at great risk. When the Pierotti litigation,  
13 instituted by Mr. Shkreli and Mr. Greebel, came before the  
14 board in May 2013, Mr. Greebel remained silent as Mr. Shkreli  
15 misled the board and stated that the dispute concerned shares  
16 that Mr. Shkreli had given Mr. Pierotti when Mr. Pierotti was  
17 dealing with financial troubles, and which contradicted Mr.  
18 Shkreli's e-mails to Mr. Pierotti acknowledging that Mr.  
19 Pierotti had purchased his Fearnow shares from Mr. Fearnow.  
20 And, again, Mr. Greebel was fully aware of the circumstance  
21 under which Mr. Pierotti and others obtained Fearnow shares.

22 Additionally, Mr. Greebel and Mr. Shkreli purposely  
23 concealed Mr. Shkreli's beneficial control of those  
24 free-trading shares from the Retrophin Board, and did not  
25 disclose it in the Form 13-Ds that were prepared by Mr.

1 Greebel and filed with the SEC on December 20, 2012 and  
2 February 19, 2013. They also failed to report Mr. Shkreli's  
3 control over the 2.4 million free-trading shares in the 13-D  
4 and to the board. Eventually, after Retrophin raised  
5 additional investments through the PIPEs in January and  
6 February of 2013, Mr. Greebel and Mr. Shkreli used Retrophin  
7 money to compensate complaining MSMB investors, using  
8 fraudulent settlement and consulting agreements. This was all  
9 very sophisticated, complex and ongoing over a course of years  
10 and, thus, a very serious offense.

11 Second, I considered Mr. Greebel's personal history,  
12 characteristics and circumstances which I find very  
13 compelling. Mr. Greebel was born in New York on July 2, 1973.  
14 He has a younger brother and a younger sister, both of whom  
15 live in New York and with whom he shares a very close  
16 relationship. Mr. Greebel's father Charles is an attorney and  
17 his mother Barbara is a retired teacher. He had the good  
18 fortune of being raised in a middle-income household in the  
19 New York suburbs, and earned the rank of Eagle Scout while in  
20 high school, and also worked as a lifeguard and swim  
21 instructor in order to help pay for his education.

22 Mr. Greebel throughout his teenage years up through  
23 the present has shown an impressive dedication to community  
24 service, commencing long before his charged criminal conduct  
25 and indictment. I acknowledge that long history and consider

1 it in determining his sentence.

2 Mr. Greebel attended college at the University of  
3 Michigan, where he earned a Bachelor's degree in Political  
4 Science, and then earned a Juris Doctor degree from the  
5 Georgetown University Law Center. He began his legal career  
6 at the prestigious law firm of Fried, Frank, Harris, Shriver &  
7 Jacobson in New York City. He married his wife, Jodi, eleven  
8 years ago and they have three healthy children. His friends  
9 and family consistently report that, as a father and a  
10 husband, Mr. Greebel is dedicated beyond extraordinary measure  
11 to his wife and children. He devotes significant amounts of  
12 time to activities with his children such as coaching his  
13 son's basketball and little league teams. His father-in-law  
14 described him -- and Ms. Denerstein had reviewed some of this  
15 already, but I have considered it -- as the kind of husband  
16 that any parent would hope for their daughter; loving,  
17 respectful, conscientious and very supportive.

18 Mr. Greebel's wife and her immediate family  
19 tragically lost her brother in 2015, their brother, son and  
20 his children's uncle. Jodi Greebel submitted a statement to  
21 the Court describing the difficulty she faced in coping with  
22 life and raising three young children after the tragedy, and  
23 emphasized her dependence on her husband. Mr. Greebel appears  
24 to have made his family a priority during this time, and even  
25 before, and he and his wife continue to host weekly Shabbat

1 and annual holiday dinners for their extended family and many  
2 friends.

3           The PSR describes Mr. Greebel's financial status,  
4 based on his tax returns from 2007 through 2016 and an  
5 incomplete Personal Financial Statement dated April 18. Based  
6 on these sources, the PSR, as amended July 17, 2018, states  
7 that Mr. Greebel has assets of over \$3 million and liabilities  
8 of over \$2 million, resulting in a net worth of just over a  
9 million dollars. Mr. Greebel, as we noted, did not provide  
10 Probation, and accordingly this Court, with the requested  
11 report regarding his wife's independent assets, which are  
12 factored into an assessment of any defendant's financial  
13 condition.

14           Mr. Greebel has not had a stable source of income  
15 since his departure from his law firm, but reports that he  
16 helps his wife deliver meals for her business, Greebel Grown  
17 Meals. He reports household monthly expenses of over \$32,000,  
18 and reports, for himself, \$800 in monthly income from his  
19 wife's business.

20           (Continued on next page.)  
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1 (Continuing)

2 THE COURT: Since the fall of 2015, Mr. Greebel has  
3 worked pro bono to establish a 30-bed inpatient facility in  
4 Masonville, a rehab facility for people who have opioid and  
5 other drug and substance abuse related issues. The PSR  
6 recommends, based on the financial statement, that Mr. Greebel  
7 not be ordered to pay a fine in light of his significant  
8 restitution and forfeiture obligations, and I agree with that  
9 recommendation.

10 With regard to Mr. Greebel's mental and physical  
11 condition, Mr. Greebel has no history of serious medical or  
12 mental issues. It is reported in the PSR that he does appear  
13 to use alcohol as an outlet for his stress, and Ms. Greebel  
14 reports to Probation that her husband drinks daily and  
15 consumes more alcohol on weekends. She also reports that she  
16 believes Mr. Greebel self-medicates with alcohol.

17 I have considered the numerous letters written on  
18 Mr. Greebel's behalf. Almost 200 people submitted letters  
19 supporting Mr. Greebel. The fact that so many of  
20 Mr. Greebel's family, friends and colleagues spent their time  
21 and took the effort to write these letters and appear here  
22 today speaks very well of Mr. Greebel. The letters focus  
23 uniformly on his concern and kindness to family and friends,  
24 as well as those in his religious community and beyond. These  
25 letters depict a patient, warm and generous family man who

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1 spends his time focused on his children's social, religious  
2 and moral development. He has spent extensive amounts of time  
3 ^ playing ^ plague with his children and accompanying them to  
4 music and sports classes when he wasn't coaching his son's  
5 little league. Letters from Mr. Greebel's friends and family  
6 submitted also describe how he provided significant and  
7 necessary support to his wife and children following the  
8 tragic loss of Mrs. Greebel's brother. His mother-in-law,  
9 Nancy Citrin, explained, and we discussed this, Ms. Denerstein  
10 described that when tragedy struck Jodi and her family two  
11 years ago, she witnessed Evan's compassion and strength  
12 firsthand. He stepped up to care for their newborn child  
13 while shielding his young sons from the difficult  
14 circumstances. Most importantly, he was a loving, caring and  
15 supportive partner to Jodi. And letters from Mr. Greebel's  
16 former colleagues and clients also attest to Mr. Greebel's  
17 strength of character, hard work and skills as an attorney.  
18 Some of the letters from former clients and co-workers  
19 describe their belief in Mr. Greebel's strong sense of  
20 integrity. Joel Cooperman, a friend and client of  
21 Mr. Greebel, wrote that he had "worked closely with Evan on  
22 several clients and I have always found his advice to be  
23 thoughtful and professional. I truly believe that Evan is a  
24 man of integrity and I know my partners and our common clients  
25 would agree." David Hennes, a partner at the law firm of



1 Ropes & Gray, wrote, "I always knew Evan to be a  
2 straight-shooter, who wanted to succeed but was not driven by  
3 money, and who was, at his core, a good and kind person, and,  
4 most fundamentally, an ethical lawyer.

5 I do also, however, consider the Government's point  
6 that all of these letters of individuals who love and support  
7 Mr. Greebel describe Mr. Greebel as they know him and not in  
8 the context of the evidence at trial.

9 I have considered as mitigation under 3553  
10 Mr. Greebel's charitable and community contributions, which  
11 are substantial and long-standing. Since childhood he was  
12 involved extensively in volunteer work and community service.  
13 He also as a young child and through his teenhood took care to  
14 watch out for the underdog and those who were alone.  
15 Mr. Greebel, along with his wife and children, following his  
16 brother-in-law's death, raised nearly \$15,000 for the SPCA of  
17 Westchester and donated hundreds of pounds of dog food.  
18 Elizabeth and Benjamin Brucker, longtime friends of  
19 Mr. Greebel, wrote that "Evan has demonstrated the importance  
20 of giving back to the community when he brought his kids to  
21 volunteer at a UJA event in the Bronx, at a facility where his  
22 grandmother used to live. My husband and Evan spent the  
23 afternoon with senior citizens ^ playing ^ plague card games  
24 and chatting with them. He was not just telling his children  
25 how to be charitable, but he showed them firsthand."

1           Notably, much of Mr. Greebel's volunteer work  
2 occurred prior to his arrest for the instant conduct, and so  
3 one can assume it was not done to make himself appear a better  
4 person. I think that this long-standing commitment to  
5 community service and humanitarian causes demonstrates that  
6 his interests are genuine.

7           Nonetheless, as the Government notes, some of the  
8 activities that Mr. Greebel characterizes as community  
9 service, including coaching his children's sports teams and  
10 assisting his wife Jodi with her business that provides  
11 income, presumably, as described in the PSR, are not truly  
12 community service as Mr. Greebel asserts. And in the case of  
13 his wife's business, that activity results in quantifiable  
14 benefits to them. But I commend their hard work, their  
15 creativity and their compelling need to provide to meet the  
16 financial needs of their family.

17           I, again, thank all of those who took time to share  
18 their perspectives. I certainly have a better view and sense  
19 of who Mr. Greebel is that goes far beyond the trial evidence.  
20 I believe that he is truly personally generous, giving and  
21 kind. All of the letters provide consistent accounts with the  
22 critical role that Mr. Greebel plays in his wife and  
23 children's lives, in particularly assisting his wife as she  
24 grieves the loss of her brother. A therapist named Simone  
25 Gordon recounts Ms. Greebel's description of the trauma she

1 suffered and the important role Mr. Greebel plays in her  
2 recovery and in supporting his children. I believe that these  
3 circumstances are extraordinary and outside the heartland.  
4 Those circumstances provide the basis to impose a  
5 non-guidelines sentence. In essence, though, I cannot ignore  
6 that this case is about Mr. Greebel's utilization of his legal  
7 status to commit an egregious multitude of deceptive acts in  
8 furtherance of the wire fraud conspiracy and securities fraud  
9 conspiracy, and his repeated breaches over the course of years  
10 of his client's trust, his abuse of his position of trust and  
11 special skills, and his critical role in the conspiracy to  
12 manipulate the price and trading of a publicly-traded company.

13 As required by 3553, I consider the need for the  
14 sentence imposed to reflect the seriousness of the offense, to  
15 promote respect for the law, and to provide just punishment  
16 for the offense. And to afford adequate deterrence, not just  
17 individually to Mr. Greebel, but to the general public. I  
18 also consider the need to protect the public from further  
19 crimes by Mr. Greebel and to avoid unwarranted sentencing  
20 disparities for similarly-situated defendants.

21 In imposing a sentence that reflects the seriousness  
22 of the offense, I am mindful that more than half of the total  
23 offense level in this case is driven by the loss amount  
24 calculations as now Circuit Judge Lynch and then District  
25 Judge Lynch wrote, loss "is certainly a relevant sentencing

1 factor: All else being equal, large thefts damage society  
2 more than small ones . . . But the Guidelines provisions  
3 for . . . fraud place excessive weight on this single factor.  
4 United States versus Emmenegger, 329 F.Supp. 2d 416 et 427,  
5 decided in 2004. In addition, in United States versus aid he  
6 will son, 441 F.Supp. 2d 506 et 509, decided by Judge Rakoff  
7 of the Southern District in 2006. He described the  
8 "inordinate emphasis" that the Guidelines place on the amount  
9 of loss in fraud cases. In part for this reason, the sentence  
10 I impose will be significantly below the sentencing guideline  
11 range of 108 to 135 months. I also note that both the  
12 Probation Department and the Government have requested a  
13 significant reduction from the advisory Guideline range in  
14 requesting a 60-month sentence, which is well below the  
15 Guideline range.

16 Mr. Greebel's facilitation of Mr. Shkreli's repeated  
17 lies to his Retrophin board and his direct and critical role  
18 in drafting sham consulting and settlement agreements, his  
19 direct role in the manipulation and control of Retrophin  
20 stock, are precisely the types of conduct that Congress sought  
21 to prohibit in enacting our securities laws. Unlike many  
22 defendants, Mr. Greebel has enjoyed the good fortune of a  
23 loving and supportive family and an excellent education. His  
24 status as a white collar defendant who will lose his law  
25 license and has suffered reputational harm does not, itself,

1 entitle him to a lighter, non-incarceratory sentence on those  
2 bases. Federal law and the Guidelines require that the Court  
3 maintain neutrality as to socio-economic status and counsels  
4 district courts not to put weight, if any, on educational and  
5 vocational skills and employment history. Guideline 5H1.2,  
6 5H1.5 and 5H1.10. Although the collateral consequences of  
7 Mr. Greebel's conviction are not unique to him, the Court does  
8 find that his wife and children's circumstances arising from  
9 the tragic death of Ms. Greebel's brother cannot be ignored.

10 In imposing a sentence, I have considered the  
11 Congressional view that general deterrence in white collar  
12 crimes is particularly important. Fraud and manipulation of  
13 financial transactions are serious offenses that will incur  
14 correspondingly serious penalties. Mr. Greebel employed his  
15 highly specialized legal skills and experience and exploited  
16 his position of trust and respect to conspire with Mr. Shkreli  
17 and others in executing the fraudulent schemes repeatedly over  
18 the course of two years, and Mr. Greebel's own client  
19 Retrophin was defrauded of funds and assets in excess of  
20 \$10 million as a result.

21 My highly regarded colleague, Judge Jack B.  
22 Weinstein, has observed that "individuals who engage in  
23 financial fraud . . . choose to engage in white collar crime  
24 because they believe that the potential for significant  
25 financial benefits outweighs the risk that they will be

1 punished." United States versus Marsh, 10-CR-480, 2011,  
2 Westlaw, 5325410, at note 1, decided in October of 2011.  
3 White collar offenders like Mr. Greebel use their intelligence  
4 and acumen to avoid detection of their crimes. In United  
5 States versus Flom, 256 F.Supp. 3d 253, decided by my  
6 colleague Judge Roslynn Mauskopf in 2017, imposed a sentence  
7 on an attorney convicted of money laundering of 48 months,  
8 despite the fact that no victim of the charged criminal  
9 conduct lost money. She explained her sentence by noting  
10 that, "lawyers need to be deterred when they abuse their  
11 license, their skill, their position of trust, to help  
12 fraudsters carry out their fraud . . . fraud is hard enough to  
13 detect, it's even harder when a lawyer is willing to abuse his  
14 position of trust to shield that fraud from detection, the  
15 crime is exacerbated when a defendant uses his appearance of  
16 trust to lure people to it."

17 Mr. Greebel used his knowledge of securities and  
18 transactional law, as well as his legal credentials, to lend  
19 an air of legitimacy to fraudulent settlement and consulting  
20 agreements. Mr. Greebel's position as outside counsel to  
21 Retrophin enabled him to conceal Mr. Shkreli's use of  
22 Retrophin as his personal piggy bank, by submitting misleading  
23 and incomplete information to the Board in meetings and in  
24 Board minutes, submitting false representations to auditors  
25 and regulatory agencies and the public regarding Retrophin's

1 liabilities and litigation risks, and preventing the detection  
2 of and dissemination of information regarding the fraud by  
3 auditors who sought to make the Board aware of the numerous  
4 settlement agreements.

5 In doing so, Mr. Greebel disregarded the ethical  
6 obligations incumbent upon him as a lawyer. Rather than show  
7 an acknowledgement of his actions, and I do not fault him for  
8 not doing so given that he intends to appeal his conviction  
9 and sentence, I believe that his expression of remorse focuses  
10 on the collateral consequences to his family. And, again, as  
11 I expressed earlier, it is always disheartening to me that  
12 defendants who appear here realize at sentencing that their  
13 families, more than themselves, will suffer the consequences  
14 of that individual defendant's judgments and decisions and  
15 actions.

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17 (Continued on the following page.)  
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1           THE COURT: (Continuing) I consider both the need to  
2 deter Mr. Greebel specifically, and to promote respect for the  
3 law and to also deter, in a general manner, attorneys who  
4 might be tempted to follow their client's lead to commit  
5 crimes. Despite favorable letters from his former colleagues  
6 and clients, Mr. Greebel's actions and subsequent statements  
7 are at odds with those characterizations. Unlike his  
8 co-conspirator, Mr. Shkreli, who acknowledged some level of  
9 responsibility for his actions at his sentencing, although  
10 that acknowledgment was minimal, Mr. Greebel expresses remorse  
11 primarily, if not exclusively, for the affect of his actions  
12 on his family. His sentencing memorandum describes him as a  
13 man deceived by a master manipulator who was led astray with  
14 little to no control over his own actions. Mr. Greebel is  
15 highly intelligent. He had a top-rate legal education and he  
16 has substantial experience and, thus, had an obligation to  
17 Retrophin. Mr. Greebel is equally responsible, if not more  
18 educated and experienced in the legal parameters of the acts  
19 that he took with his co-conspirators. He worked his way up  
20 through his excellent hard work to become an income partner at  
21 Katten and earned substantial sums as a result of his legal  
22 work. He is not feckless, he is not naive, he is not  
23 inexperienced and he was not led astray by a young brash CEO.

24           Mr. Greebel made a conscious decision to join Mr.  
25 Shkreli and others in the fraud conspiracies, and was rewarded



1 for a time with a nearly threefold increase of his  
2 compensation, and was able to attain the relationship partner  
3 status for this attention and media-grabbing and, to some  
4 members of the public, charismatic partner in crime. Mr.  
5 Greebel did not just make one aberrational poor choice,  
6 instead he engaged in a sophisticated pattern and practice of  
7 deceit over the duration of the period charged in the  
8 indictment. In convicting Mr. Greebel of Counts Seven and  
9 Eight, the jury found that the evidence supported a finding  
10 that he intentionally conspired to defraud his client,  
11 Retrophin, the individual investors, the investing public, the  
12 federal regulatory agencies, all in service of Mr. Shrekli's  
13 fraudulent financial schemes.

14 I acknowledge that Mr. Greebel's sentencing  
15 submission states that "a verdict cost him his reputation and  
16 the end of a career in a profession that had always been his  
17 dream," but all of those consequences were the result of Mr.  
18 Greebel's own actions, and not the prosecutors, the FBI, or  
19 anyone else. These results were certainly foreseeable.

20 Based on Mr. Greebel's actions and statements, the  
21 Court cannot be confident that a non-incarceratory sentence  
22 requested by the defendant will adequately serve the goals of  
23 sentencing. Thus, the sentence I impose reflects the need to  
24 promote respect for the law and deter Mr. Greebel,  
25 specifically, and the public generally, from illegal conduct

1 as required by 3553. I believe the sentence will also avoid  
2 unwarranted and unfair sentencing disparities and I have  
3 considered extensively sentences in similar cases, both those  
4 before me personally and others in this circuit.

5 After giving respectful consideration to the  
6 guidelines and all of the submissions, the request of the  
7 parties, and all of the factors set forth in 3553(a) (1)  
8 through (7), for all of the reasons stated above, I will  
9 impose a sentence that is below the range of 108 to 135 months  
10 and is sufficient but not greater than necessary for  
11 punishment and deterrence.

12 Again, the mitigating factors of his unique family  
13 circumstances and his long history of charitable work, I  
14 believe motivate a sentence as follows:

15 I sentence Mr. Greebel to a sentence of 18 months on  
16 each of Counts Seven and Eight to run concurrently.

17 Supervised release will be imposed for three years  
18 on each count, also to run concurrently, with the following  
19 special conditions:

20 Mr. Greebel shall comply with payment of his  
21 Restitution and Forfeiture Orders.

22 Mr. Greebel shall maintain full-time verifiable  
23 employment and refrain from engaging in any self-employment  
24 which involves access to clients' assets, investments, or  
25 money, or solicitation of assets, investments, or money, and

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1 he shall assist the Probation Department in verifying any  
2 employment he secures while under supervision. For the  
3 purposes of this order, self-employment includes companies or  
4 entities in which Mr. Greebel has a financial interest,  
5 derives a benefit, or is a controlling or majority shareholder  
6 or otherwise controls or directs the operations.

7 Community service shall be imposed in the amount of  
8 20 hours per week for any period that Mr. Greebel is not  
9 employed full-time.

10 Mr. Greebel shall provide the Probation Department  
11 and the U.S. Attorney's Office with complete and truthful  
12 disclosure of his financial records, including commingled  
13 income, expenses, assets and liabilities to include yearly  
14 income tax returns. With the exception of the financial  
15 accounts reported and noted within the pre-sentence report,  
16 the defendant is prohibited from maintaining and/or opening  
17 any additional individual or joint checking, savings or other  
18 financial accounts for either personal or business purposes  
19 without the knowledge and prior approval of the Probation  
20 Department. The defendant shall cooperate with the probation  
21 officer in the investigation of his financial condition and  
22 dealings and shall provide truthful and complete monthly  
23 statements of his income and expenses. The defendant shall  
24 cooperate in the signing of any necessary authorization to  
25 release information forms prohibiting the Probation Department

1 to access his financial information and records.

2 Restitution is mandatory and will be imposed in  
3 favor of Retrophin, the victim of Count Seven, in the amount  
4 of \$10,447,979. That amount is due and payable immediately  
5 and may be enforced by the Government. If that amount cannot  
6 be recovered immediately, it shall be payable at a rate of \$25  
7 per quarter while Mr. Greebel is in custody. And starting on  
8 the first day of the first month after his release, Mr.  
9 Greebel will pay a minimum amount of restitution of at least  
10 15 percent of his gross monthly income after deductions  
11 required by law, or \$500 per month, whichever is greater. He  
12 must pay this amount until paid in full. Restitution has a  
13 priority over any other financial obligations, like  
14 forfeiture.

15 Failure to comply with his restitution payments and  
16 forfeiture payments will provide grounds for a violation of  
17 supervised release.

18 Mr. Greebel must pay a \$200 mandatory special  
19 assessment for the two counts of conviction.

20 I will not impose a fine given the amount and the  
21 priority of restitution.

22 Mr. Greebel must also pay forfeiture in the amount  
23 of \$10,555.15 for Count Seven and \$105,906.88 for Count Eight,  
24 for a total forfeiture of \$116,462.03. The forfeiture shall  
25 also be paid in full, if Mr. Greebel has assets to do so, or

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1 at the same rate and under the same conditions as he should  
2 pay restitution. If he can do so simultaneously, he shall pay  
3 both the restitution and forfeiture simultaneously. And if he  
4 can not do so, he will pay his forfeiture after he completes  
5 his restitution, or if he becomes able to pay both  
6 simultaneously on a regular monthly payment schedule.

7 I'd like to discuss with counsel any recommendations  
8 as to his designation and a surrender date.

9 MR. BRODSKY: Your Honor, in light of your sentence,  
10 would you give us a few days to make a recommendation on a  
11 sentencing facility on a designation?

12 THE COURT: Yes, I can hold the judgment until  
13 Monday, would that be all right?

14 MR. BRODSKY: Would you make it Tuesday, just  
15 because today is the end of the day?

16 THE COURT: Okay. Do you also want to discuss with  
17 your client a surrender date? I am assuming he will self  
18 surrender, which will give him better stead within the Bureau  
19 of Prisons.

20 MR. BRODSKY: He certainly would, Your Honor.  
21 Before that, we would ask for bail pending appeal under the  
22 statute for bail pending appeal, which is, as Your Honor  
23 knows, Title 18 United States Code 3143.

24 THE COURT: Does the Government object?

25 MS. SMITH: Yes, Your Honor, and given that this

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1 wasn't raised before today and we don't believe that the  
2 defense can show there is a substantial question of law or  
3 fact likely to result in a reversal on both counts, if the  
4 Court is going to consider it and the motion is made before  
5 the Court, we would like the opportunity to brief it.

6 THE COURT: Well, I am not going to remand him  
7 today.

8 MS. SMITH: I recognize that. Next week is fine.

9 THE COURT: Why don't you both put in your  
10 submissions on whether he should be remanded by Tuesday.

11 MS. SMITH: Your Honor, can we respond to the  
12 defense motion, because we don't know what they are claiming  
13 is a substantial issue of law; in fact, it is hard for us to  
14 take a position.

15 THE COURT: I will ask for responses by Wednesday.  
16 All right?

17 MS. SMITH: Yes.

18 THE COURT: Submissions by Tuesday, responses by  
19 Wednesday.

20 MR. BRODSKY: My understanding, Your Honor, is the  
21 Government is not opposing self surrender in 45 days, or  
22 whenever it may be; I think they are opposing bail pending  
23 appeal. So, in light of that -- I think that's my  
24 understanding.

25 MS. SMITH: That's correct. We would like the

1 opportunity to brief bail pending appeal that needs to be  
2 defended in the District Court, but we do not object to self  
3 surrender.

4 MR. BRODSKY: And since there is no objection to  
5 self surrender, we are happy to submit on Tuesday our motion  
6 paperwork, but perhaps you can give us a week, Your Honor, for  
7 the bail pending appeal. Your Honor can issue the judgment  
8 with the designation before that, but the issue of bail appeal  
9 is separate from the judgment.

10 THE COURT: Do the parties need more than a week? I  
11 mean, do the parties need more than Tuesday to brief this?

12 MR. BRODSKY: More than Tuesday, probably. We would  
13 ask for one week from today, that would be fine.

14 THE COURT: On Friday, next Friday, August 24th?

15 MR. BRODSKY: Yes, Your Honor.

16 THE COURT: The problem is I have a business trip  
17 the last week of August, out of state, so I would want to be  
18 able to deal with this before I leave.

19 MR. BRODSKY: Do you want us to do next Thursday?

20 THE COURT: Well, that gives me 24 hours. You have  
21 put me through the paces, Mr. Brodsky, I would like more time  
22 because I believe this is an important issue. Could you put  
23 it in by, at the latest, close of business Tuesday?

24 MR. BRODSKY: We could, Your Honor. May I suggest  
25 this? I mean, we certainly will do it, Your Honor, since the

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1 self surrender would be 45 days out or 60 days out, we would  
2 ask for 60 days, and, therefore, that -- the key issue is the  
3 self surrender date. Technically speaking, Your Honor, would  
4 have to make a decision before that self surrender date as to  
5 whether or not he needs to self surrender on that date or he  
6 is entitled to bail pending appeal.

7 THE COURT: Generally, from my experience, the BOP  
8 doesn't designate anybody for six weeks generally, and I am  
9 assuming Mr. Greebel is going to request a designation to a  
10 facility close to the New York City area so that, if he wishes  
11 to have family visits, they can be made.

12 What is the Government's view on briefing? I don't  
13 want to let something lurk.

14 MS. SMITH: I agree with Mr. Brodsky, the judgment  
15 can be issued and we can brief bail pending appeal. I think  
16 if the defense put in their submission by the 24th, we can  
17 respond by the 31st, and then Your Honor could issue a  
18 decision the following week which would give, depending on the  
19 outcome, either party sufficient time to appeal to the Second  
20 Circuit before the surrender date would happen since they do  
21 do that on an expedited basis.

22 THE COURT: So Mr. Greebel's motion for bail pending  
23 appeal would be submitted by August 24th and the Government  
24 would respond by August 31st.

25 MR. BRODSKY: Will we have an opportunity for reply,



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1 Your Honor? I hate to ask.

2 THE COURT: Fine. If you have a reply, don't raise  
3 new issues though.

4 MR. BRODSKY: I will not.

5 THE COURT: That just kept happening.

6 MR. BRODSKY: I apologize, Your Honor, I will not.

7 THE COURT: Just tell me everything you need to tell  
8 me.

9 Is there anything else?

10 MR. BRODSKY: What date would you like us to submit  
11 the reply?

12 THE COURT: Well, we are going to start running into  
13 Labor Day and the holidays, let's just say September 7th,  
14 that's more than enough time.

15 MR. BRODSKY: Thank you. Would you recommend, Your  
16 Honor, Mr. Greebel's admission to the RDAP program, the  
17 alcohol treatment program, in light of his history of --

18 THE COURT: Do you want me to recommend it, also, as  
19 a condition of his supervised release? I've thought about it,  
20 given some concerning information in the PSR.

21 MR. BRODSKY: Yes, Your Honor.

22 THE COURT: All right. So I will also order that  
23 Mr. Greebel submit to -- I don't think we have any drug  
24 issues, but alcohol abuse?

25 MR. BRODSKY: Yes, Your Honor.

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1 THE COURT: Counseling and treatment?

2 MR. BRODSKY: Yes.

3 THE COURT: And as a condition of probation?

4 MR. BRODSKY: The prison has a program for it and he  
5 may need to continue it into supervised release.

6 THE COURT: I'm sorry I said probation, but I meant  
7 as a condition of supervised release, and RDAP program with  
8 the BOP.

9 MR. BRODSKY: Thank you, Your Honor.

10 THE COURT: I don't know what facilities have that  
11 program within the tri-state area.

12 MR. BRODSKY: That's one of the things that we  
13 wanted to check to make sure.

14 THE COURT: All right.

15 (Continued on following page.)  
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1 (Continuing)

2 MS. SMITH: And then, Your Honor, since the defense  
3 has suggested 60 days for surrender date, that would be  
4 October 17th.

5 THE COURT: He will self-surrender, sir?

6 MR. BRODSKY: Yes.

7 THE COURT: All right.

8 I recognize that this is very difficult for the  
9 Greebel family, but I do wish everybody well.

10 MR. BRODSKY: Thank you, Your Honor.

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12 (Matter adjourned.)

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SAM

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